159 U.S. 5-64

RECORD, CASE No. 13,572.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~N~~. ~~15~~ X /

GEORGE H. HILTON, APPELLANT,

vs.

JAMES E. JONES, JOHN HILTON, THOMAS W. LOWREY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED JUNE 10, 1889.

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1 Pleas before the Honorable David J. Brewer, judge of the circuit court of the United States for the eighth circuit and district of Nebraska, sitting in said circuit court, at the term of May, A. D. 1887.

Be it remembered that on the 17th day of September, A. D. 1883, a bill was filed in the office of the clerk of said circuit court; which said bill is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.
To the November Term Thereof, 1883.

GEORGE H. HILTON
vs.
JAMES E. JONES, JOHN HILTON, THOMAS W. LOWREY, THOMAS P. Smith, William C. Lincoln, James F. Hilton, Joseph B. Hilton, Nora M. Lincoln, Alice B. Ducharme, Augusta Hilton, Smith B. Galey, Jacob Rocke; The State National Bank of Lincoln, Nebraska; Otoe County National Bank of Nebraska City, Nebraska; John M. Young, and August F. J. Schmutte.

To the judges of the circuit court of the United States for the district of Nebraska:

George H. Hilton, a resident of Cincinnati and a citizen of the State of Ohio, brings this his bill against John Hilton, a citizen of the State of Iowa and residing in Madison county, Iowa; James F. Hilton and Joseph B. Hilton and Nora M. Lincoln and Thomas P. Smith, all residents of Chicago and citizens of the State of Illinois; Wm. C. Lincoln, resident of Boston and citizens of Massachusetts; Alice B. Ducharme, a resident of Detroit & citizen of the State of Michigan; Augusta Hilton, a resident of New York and citizens of the State of New York; Smith B. Galey, a resident of Omaha,
2 Nebraska; James E. Jones, a resident of Lincoln, Nebraska, and citizen of the United Kingdom of Great Britain and Ireland; Thomas W. Lowrey and Jacob Rocke, residents of Lincoln and citizens of the State of Nebraska; The State National Bank of Lincola, Neb.; The Otoe County National Bank of Nebraska City, resident of Nebraska City and citizens of the State of Nebraska; John M. Young, a resident of Nebraska, and August F. J. Schmutte, residents of Lancaster county and citizen of the State of Nebraska.

And thereupon your orator complains and says that heretofore, to wit, on the 26th day of October, A. D. 1861, he was the owner in fee simple of the lands hereinafter first described; that said lands were then in a state of nature, which had previously been located for him by his brother, John Hilton, who then contemplated moving to Nebraska; that your orator is the father of George L. Hilton, James F. Hilton, and Joseph B. Hilton, who, at the date aforesaid, were infants of tender years; that your orator, having faith and confidence in the faithfulness, ability, and integrity of his said brother, John Hilton, did, on said 26th day of October, 1861, fully execute

and deliver to the said John Hilton for all the purposes therein expressed and for none other his certain deed of trust, which is in the words and figures following, to wit.:

Know all men by these presents that George H. Hilton, of Hamilton county, Ohio, in consideration of one dollar, and natural love and affection, to him paid by John Hilton, of Madison county, Iowa, the receipt whereof is hereby acknowledged, do- hereby grant, bargain, sell, and convey to the said John Hilton, his heirs and assigns forever, in trust for benefit of my sons, George L., James F., and Joseph B. Hilton, in equal portions, said trustee having authority to sell and convey any portion, at any time or in any way, at his discretion, for

3 their benefit, the following-described real estate, situate in the Territory of Nebraska, viz: W. ½ S. E. ¼ and S. W. ¼ of N. E. ¼ of sec. 30, T. 8 N. of R. 7 E., and S. W. ¼ of N. W. ¼ and N. W. ¼ of S. W. ¼ of sec. 14 and N. E. ¼ of S. E. ¼ of sec. 15, T. 9 N. of R. 6 E., and W. ½ and S. E. ¼ of N. E. ¼ of sec. 29, T. 8 N. of R. 7 E., and S. W. ¼ of sec. 11, T. 9 N. of R. 6 E., and S. E. ¼ of N. W. ¼ *an* and E. ½ of S. W. ¼ and S. W. ¼ of S. E. ¼ of sec. 19, T. 8 N. of R. 7 E., and N. W. ¼ of N. W. ¼ of sec. 3 and N. E. ¼ of N. E. ¼ of sec. 4, T. 7 N. of R. 7 E., and S. E. ¼ of S. E. ¼ of sec. 33 and S. W. ¼ of S. W. ¼ of sec. 34, T. 8 N. of R. 7 E., and N. W. ¼ of sec. 18, T. 8 N. of R. 7 E., and N. E. ¼ of sec. 6, T. 8 N. of range 7 E., and S. W. ¼ of sec. 2, T. 9 N. of R. 6 E., and S. W. ¼ of sec. 11, T. 9 N. of R. 6 E., and S. E. ¼ of sec. 2, T. 9 N. of R. 6 E., and E. ½ of sec. 11, T. 9 N. of R. 6 E., and S. ½ of N. W. ¼ of sec. 14 and S. E. ¼ of N. E. ¼ of sec. 15, T. 10 N. of R. 6 E., and N. ½ of N. W. ¼ and N. W. ¼ of N. E. ¼ of sec. 21, T. 10 N. of R. 6 E., and W. ½ and N. E. ¼ of N. E. ¼ of sec. 11, T. 9 N. of R. 6 E., and E. ½ of S. E. ¼ of sec. 1 and N. E. ¼ of N. E. ¼ of sec. 12, T. 8 N. of R. 6 E., and E. ½ of N. W. ¼ and N. E. ¼ of S. W. ¼ of sec. 6, T. 8 N. of R. 7 E., being situated in Clay and Lancaster counties, *of* said Nebraska Territory, and all the estate, title, and interest of the said George H. Hilton, either in law or equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging; to have and to hold the *same* to the only proper use of the said John Hilton, in trust as aforesaid, his heirs and assigns forever; and the said George H. Hilton, for himself and heirs, executors, and administrators, do- hereby covenant with the said John Hilton, his heirs and assigns, that the title so conveyed is clear from and unencumbered by any act of the said George H. Hilton.

In witness whereof the said George H Hilton has hereunto set his hand and seal this 26th day of October, in the year of our Lord one thousand eight hundred and sixty-one.

GEO. H. HILTON. [SEAL.]

4 Signed, sealed, acknowledged, and delivered in presence of us—

L. C. WOOD.
JEREMIAH LYNCH.

Here follows the acknowledgment of same—omitted.

And your orator further says that after the delivery of the said deed said John Hilton accepted the said trust, which was endorsed on said deed and recorded at the same time with the deed as follows, to wit: "I accept the trust as above stated."

Witness my hand and seal this 20th day of November, A. D. 1861.

JOHN HILTON. [SEAL.]

And your orator further says that said deed and the acknowledgment thereof, together with the acceptance of the trust as above stated, was, on the 24th December, 1867, at 2 o'clock p. m., filed for record and duly recorded in the records of deeds of Lancaster county, Nebraska, in Book A, page 252, a copy of which is herewith filed as Exhibit "A" and made part hereof.

And your orator further says that the said John Hilton, as trustee aforesaid, has not exercised nor performed the said trust and power so granted and conveyed unto him, nor has he at any time conveyed to any person whomsoever the said lands or any part thereof in manner and form and for the uses and purposes for which the said lands — so conveyed to him.

And, further, that the said John Hilton has not resigned the said trust, nor has he been removed as such trustee, nor has any court of competent jurisdiction appointed or created any other trustee, person, or persons to execute the said trust.

And your orator further says that said John Hilton, on the 16th day of September, A. D. 1863, the said lands then being of the value of twenty-five thousand dollars, pretending and assuming to perform and exercise said trust so created and granted, did wrongfully, incautiously, and in violation of the powers and authority so granted unto him assume and pretend to convey by deed in fee simple the said lands to one Alice B. Hilton, now Alice B. Ducharme, for no consideration whatever but for the pretended and grossly inadequate consideration of one thousand dollars, when in truth and fact no sum of money whatever was paid or intended to be paid by the said Alice to the said John Hilton; that the same was in truth and in fact a mere voluntary deed and gift without authority to do so, which pretended deed was on the 10th day of January, A. D. 1868, at 7 o'clock p. m., filed for record and recorded in the records of deeds of Lancaster county, Nebraska, in Book "A," page 269, a copy of which is herewith filed, marked Exhibit "B," and made part hereof.

And your orator further says that through ignorance of the law and without proper consideration and advice in the premises and in violation of the trust and confidence reposed in said trustee the said pretended deed was intended to convey said lands to said Alice B. Hilton in trust for the said George L., James F., and Joseph B. Hilton, who were then minors, with all the powers, authority, and limitation and uses confided personally to the said John Hilton in the deed of trust so made to him, and that it was so understood as a deed of trust between the parties to said deed to Alice B. Hilton at the making thereof and always so publicly declared as so in-

tended then and at all subsequent times to all persons and parties in inquiry.

And your orator represents and says, under advice of counsel, that there was no authority to delegate said trust or to entrust any other person or persons with the authority and power therein confided to said John Hilton; and your orator further says that said John Hilton, pretending to act as trustee for said minors, signed said pretended deed and acknowledged the same in his individual capacity and not as trustee. 6

And your orator further says, under advice of counsel, and submits to the court that by the terms and conditions of the trust confided to him as aforesaid he had no authority to make said deed to Alice B. Hilton or to convey or delegate his authority as such trustee to her or to give away said lands or convey them for a grossly inadequate consideration, as the same appears on the face of said deed made to her.

And your orator submits, under advice of counsel, that the making of said deed to her, being without authority, was but the individual act of John Hilton and not his official act as trustee, and therefore null and void, and that the said Alice B. Hilton having had full and actual notice, as your orator avers, of the trust aforesaid and the powers, obligations, and duties thereof, the deed to her and the assumed delegation of the trust to her was void and of no force or validity in law; and your orator avers that she assumed to make no conveyance of any kind under and by virtue of the deed of trust so made to her except the one hereinafter mentioned to her sister, Augusta Hilton.

And your orator further says that on the 22nd day of November, A. D. 1865, the said Alice B. Hilton pretended to convey to her sister, Augusta Hilton, all of said lands as in the original trust deed described, except the N. E. ¼ of section 6, township 8 N., of range 7 east, which tract was not included in the deed to said Augusta, and your orator avers that no title nor color of title passed for that tract to any one who subsequently pretebds to acquire title through the said Augusta Hilton, and your orator asks the court so to find; also except the W. ½ of N. W. ¼ and N. W. ¼ of N. E. ¼ of section 21, township 10 N., of range 6 E., which tract or location had been previously cancelled by the General Government as saline lands. 7

And your orators further state that said Augusta Hilton at the time of the making of said deed to her was of lawful age; that she had full and actual notice of the said trust deed made to said John Hilton, with its powers and limitations, and that the said deed to Alice B. Hilton assumed to and was intended to be a similar trust deed.

And your orator further says that said deed to said Augusta appears to be a voluntary deed and gift on its face by the consideration of one dollar and natural love and affection, and they, as your orator states under advice of counsel, put all subsequent purchasers on inquiry as to the true nature of her title.

And your orator further says that said deed to said Augusta was

intended between the parties to the same as a deed of trust, with the same powers and authority of the original deed of trust to John Hilton, and the same derived from that deed and so publicly understood and stated to all parties on inquiry, which pretended deed was filed for record the 10th day of January, A. D. 1868, at 8 o'clock p. m., and duly recorded in the records of deeds of said Lancaster county, in Book "A," page 273, a copy of which, marked Exhibit "C," is herewith filed and made a part hereof.

And your orator further says that on the 25th day of August, A. D. 1871, the said Augusta Hilton pretended and assumed to convey to her brother, Geo. L. Hilton, one of the original *cestui que trusts*, who had then arrived at legal age, in his own individual
8 rights and as of his own individual property, the individual one-third of all the lands described in the said trust deed to John Hilton (except the saline lands as above stated and certain tracts in said deed to George L. mentioned as deeded by said Augusta), for a particular description of which lands reference is hereby made to said deed to George L. Hilton, which deed was on the 8th day of November, A. D. 1871, at 3.50 p. m., filed for record and duly recorded in the records of deeds of said Lancaster county, in Book "J," page 560, a copy of which is herewith filed, marked Exhibt "D," and made a part hereof.

And your orator further states that said Geo. L. Hilton, at the time of making said deed to him, had a full and actual knowledge of the original trust to John Hilton, and that the said deed to John Hilton was on record and notice to him, and he also had notice and knowledge that the only title he acquired to said lands as deeded to him was through the assumed powers of the said Alice B. and Augusta Hilton, assuming to exercise the trust aforesaid.

And your orator further states that no money was paid by said George L. for said lands, and that the only consideration was, as expressed in the deed, one dollar and natural love and affection and no more.

And your orator further says and charges that the said Augusta Hilton, pretending and assuming to act as if clothed with the powers and by virtue of the original trust to John Hilton, made the said deed to the said George L. Hilton under the mistaken opinion that the said Geo. L. Hilton was entitled to have his portion, being an undivided one-third of said land, conveyed to him under said original deed of trust in his own right in fee on his arriving at the age of twenty-one years, and thereupon and for that purpose
9 she assumed to make the deed aforesaid to him.

Your orator, however, further says and asserts, under advice of counsel, that the original trust to John Hilton made for the benefit of the *cestui que trusts* as aforesaid delegated no such power to the said trustee to make over or to convey, by deed or otherwise, in any way to the said *cestui que trusts* their respective portions of the said lands on their respectively arriving at the age of twenty-one years, neither did the said original deed of trust authorize or empower any one in his stead to make any such deed or conveyance to the said *cestui que trusts*, and that all such deed or deeds or con-

veyances or acts are null and void and of no validity in law, and your orator asks the court so to declare.

Your orator further says, under advice of counsel, that by the express terms, considerations, and limitations of said original deed of trust the same is limited to your orator's three sons, George L., James F., and Joseph B. Hilton, and that the same was meant and intended to be, and by the law of the land is, an estate for life only and limited to the respective lives of said George L., James F., and Joseph B. Hilton, and your orator prays the court so to declare.

And your orator further says that on the 11th day of September, A. D. 1872, the said George L., in his own name as of his own individual property, pretended to convey to one Smith B. Galey in fee simple, for the nominal consideration of $3,500.00, a sum greatly inadequate, none of which, your orator is informed and believes and so believing charges the same to be true, was ever paid or intended to be paid, the undivided one-third of the following lands, to wit: N. E. ¼ and the N. E. ¼ of the S. W. ¼ and the E. ½ of the N. W. ¼ of section 6, township 8 N., of R. 7 E., of 6th P. M., which is a part of the lands included in the original trust deed to John
10 Hilton and part of the lands included in the said pretended deed from Augusta Hilton to said George L. Hilton, as per Exhibit "D" above referred to.

Which pretended deed to said Galey was filed for record September 12th, 1872, at 1 p. m., and duly recorded in the record of deeds of said Lancaster county, in Book "K," page 405, a copy of which is herewith filed, marked Exhibit "E," and made a part hereof.

And your orator further says that said Geo. L. Hilton, on the 16th day of September, 1872, for nominal consideration of $5,000.00, a sum grossly inadequate, none of which was, as your orator is informed and believes, *was* ever paid, and so believing charges the same to be true, pretended and assumed to convey to the said Smith B. Galey, in his own right and as of his own individual property, in fee simple the undivided one-third of the lands in said pretended deed, a copy of which is Exhibit "F," herewith filed and made a part of this bill, which was filed for record the 17th of September, 1872, at 3.35 p. m., and duly recorded in the records of deeds of said Lancaster county, in Book "K," page 442, for a particular description of which lands reference is here made to Exhibit "H."

And your orator further says that the lands in the two pretended deeds last above referred to, made to said Smith B. Galey, includes an undivided one-third of portion of the lands deeded in trust as aforesaid to John Hilton and one undivided third of all the lands mentioned in the pretended deed from Augusta Hilton to said Geo. L. Hilton, as per Exhibit "D."

And your orator further says and charges that the said Smith B. Galey, at the time of the making of the two pretended deeds to him above referred to, had had notice and knowledge of the trust
11 or assumed trust held by the grantees under the pretended deeds made to Alice B. Hilton and to Augusta Hilton, as per Exhibits "B" & "C," and that his sole title was derived through

them as trustee under the original trust, though unlawful and invalid, as your orator alleges.

And your orator further says that each of said two last-mentioned deeds to said Galey were without authority and void and made by the parties thereto in fraud of the rights of you- orator in the premises.

And your orator further says that the said S. B. Galey and the said George L. Hilton pretended and assumed to convey to one William C. Lincoln, by a pretended deed dated 18th September, 1873, and filed for record and duly recorded the same day at 2 o'clock p. m. in records of deeds of said Lancaster county, in Book "M," page 507, a copy of which is herewith filed as Exhibit "K" and made a part hereof, to him and his heirs and assigns, the undivided one-third of the lands described in said deed, for a particular description of which lands reference is here made to said Exhibit "K," the same being the whole of the undivided one-third of all the lands described in the pretended deed from Augusta Hilton to said George L. Hilton, as described in Exhibit "D."

And your orator further represents and says as to the pretended deed above referred to, made to said William C. Lincoln on the 18th day of September, 1873, — was made by said Galey under a consciousnesss of the fraud in the pretended sale between him and the said George L. Hilton, and the making of the said pretended deed to Lincoln, divesting the said Galey of whatever title he may have had in the said lands, was concocted and arranged between him and the said Lincoln with the attempted purpose to place the title to said lands in the said William C. Lincoln in fee simple
12 individually; that the consideration of said deed of $2,200 was merely nominal and on its face was a grossly inadequate sum as compared to the real value of the lands, the ⅓ interest being worth at least ten thousand dollars; and your orator charges that if said consideration was paid at all it was paid wholly to said Smith B. Galey and not a cent to George L. Hilton by the said Lincoln, not as a payment for the land or its value, but as a *douceur*, in order to have the pretended deed made to him, the said Lincoln, and thereby to place the apparent title to said lands in his name and under his controle.

And your orator is informed and believes, and *do* believing charges the same to be true, that not one cent of said last-mentioned consideration money was ever paid to said George L. Hilton either by Galey or Lincoln, and that he was really cheated and defrauded by them out of the said lands.

And your orator charges that said Lincoln had notice of the original trust deed to John Hilton and of the pretended trusts, as heretofore charged, to Alice B. and Augusta Hilton, and he holds said lands in fraud of the rights of your orator in the premises.

Your orator further says that the above several deeds heretofore set forth and referred to constitute the whole and complete pretended chain of title as appears of record of the said William C. Lincoln to said lands, which your orator says, under advice of counsel, is

fatally defective, unauthorized, illegal, and void, and your orator asks the court so to declare.

And your orator further represents and says that on the 16th day of September, 1877, the said Geo. L. Hilton, one of the *cestui que trusts* as aforesaid, died at Albany, in the State of Missouri,
13 intestate, without ever having been married and without issue and without administration, owing no debts; and your orator says as the father of said deceased he is by the law regulating and prescribing the order of descent in the State of Nebraska of lands and tenements entitled and vested with all the lands and tenements of which his son, the said George L. Hilton, dec'd, seized; and, under advice of counsel, your orator says as the title to said undivided ⅓ of the lands described in the deed of trust to John Hilton still remains in said John Hilton, and never legally passed out of him or been legally conveyed to any person, your orator is lawfully seized of all of his interest, if any, of said lands by the law of descent.

And your orator further represents and says, under advice of counsel, that if the said George L. Hilton was only seized of a life estate in the undivided one-third of said lands by the terms and conditions of the original deed of trust aforesaid made to said John Hilton, then your orator, as the original owner in fee and the settler or donor of said lands, is entitled to and becomes vested of the reversion — of the said life estate had terminated.

And your orator asks the court so to declare and find.

And your orator further says that on the 18 day of March, 1874, the said Wm. C. Lincoln and Nora M. Lincoln, his wife, by a pretended deed of that date, assumed and pretended to convey to one James E. Jones, for the consideration of $993, in fee simple, which consideration for the lands so conveyed was grossly inadequate, the undivided one-third interest in the N. E. ¼ & the E. ½ of the N. W. ¼ and the N. E. ¼ of the S. W. ¼ of section No. 6, township 8 N., of range 7 E., containing 286.92 acres, which pretended deed was
14 filed for record 20th M'ch, 1874, at 2.50 p. m., and duly recorded in the records of deeds of said Lancaster county, in Book "N," page 617, a copy of which is herewith filed, marked Exhibit "H," and made a part hereof.

And your orator further says that on the 18th day of March, A. D. 1874, the said William C. Lincoln and Nora M. Lincoln, his wife, by a pretended deed of that date, assumed and pretended to convey to the said James E. Jones, for the consideration of $3,900.00, which consideration for the lands so conveyed was grossly inadequate, and in fee simple the undivided one-third of all the lands described in the said pretended deed, a copy of which is Exhibit "I," herewith filed as an exhibit and made a part hereof, a reference to which is here made for a particular description of the said lands, which deed was filed for record 29 March, 1874, at 10.45 a. m., and duly recorded in the records of deeds of said Lancaster county, in Book "N," page 607, containing 620 acres, more or less.

And your orator further says that two last-mentioned pretended deeds to said James E. Jones contain*ing* a large portion of the lands

assumed to be conveyed by S. B. Galey and George L. Hilton to the said William C. Lincoln by the pretended deed hereinbefore referred to as Exhibit "G," made part of this bill, and also contained in the trust deed to John Hilton.

And your orator charges that said James E. Jones had notice of the original trust deed to John Hilton and of the pretended trust deeds, as hereinbefore charged, made to Alice B. and Augusta Hilton and all the other deeds in this bill mentioned, and that said Jones holds said lands illegally and in fraud of the rights of your orator in the premises.

And your orator says that the above several deeds or pretended deeds hereinbefore set out and referred to in this bill constituted the whole and complete claim of title, as appears of record, of the said James E. Jones to said lands so above by said two deeds pretended to be conveyed to him, which your orator says, under advice of counsel, is fatally defective and the pretended deeds unauthorized, illegal, null, and void, and your orator asks the court so to declare.

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And your orator further says that on the 19th day of March, A. D 1874, the said William C. Lincoln and Nora M. Lincoln, his wife, by a pretended deed of that date, assuming and pretended to convey to one *to one* Thomas W. Lowrey, for the consideration of $3,600, which consideration for the lands, "being for *three*-thirds" of all the lands, was grossly inadequate, and in fee simple the undivided one-third of all the lands described in the said pretended deed, a copy of which is Exhibit "K," herewith filed as an exhibit and made a part hereof, a reference to which is here made for a particular description of said lands, which pretended deed was filed for record M'ch 20th, 1874, at 9.40 a. m., and duly recorded in the records of deeds of said Lancaster county, in Book "N," page 612.

And your orator further says and charges that said Thomas W. Lowrey had notice of the said trust deed to John Hilton and of the pretended trust deeds, as hereinbefore charged, made to Alice B. Hilton and Augusta Hilton and of all the other deeds as charged in this bill mentioned, and that Lowrey holds said lands illegally and in fraud of the rights of your orator in the said premises.

And your orator says that the above several deeds and pretended deeds hereinbefore set out and referred to in this bill constitutes the whole and complete chain of title, as appears of record, of the said Thomas W. Lowrey to said lands so above pretended to be conveyed to him, which your orator, under advice of counsel, says is fatally defective and the said pretended deed to him unauthorized, illegal, null, and void, and your orator asks the court so to declare.

16

And your orator further says that one Jacob Rocke, as he is informed and believes, is in possession and pretends to claim some ownership or title to the following tract of land through and by virtue of a pretended deed made to him by the said Thomas W. Lowrey, to wit: N. W. ¼ of N. W. ¼ of section 3 and N. E. ¼ of N. E. ¼ of section 4, T. 7 N. of R. 7 E.; also the S. E. ¼ of S. E. ¼ of sec. 33 and S. W. ¼ of S. W. ¼ of section 34, T. 8 N., of range 7 E.,

in Lancaster county, Neb., which tract of land is part and parcel of the land included in the said pretended deed from Lincoln to Lowrey above referred to; and your orator prays that said Jacob Rocke may be made a party defendant hereto and required to answer and show to the court the nature of his title or pretended title, if any he has.

And your orator further says that said Rocke had notice of the pretended deeds in the chain of title of the said Lowrey and of the original trust to John Hilton and the assumed trust, as herein charged, to Alice B. and Augusta Hilton; and your orator charges that said pretended deed was made in fraud of the rights of your orator, and said deed to Rocke was dated 13th January, 1875, and filed for record 14 January, 1875, a. m., and duly recorded in records of deeds of said Lancaster county, in Book "P," page 586, reference to which record is hereby made.

And your orator further says that on the 24th day of August, A. D. 1874, the said William C. Lincoln and Nora M. Lincoln, his wife, by a pretended deed of that date, assumed and pretended to convey to one Thomas P. Smith, of Clark county, Illinois, for the
17 alleged consideration of $2,000, and in fee simple the following lands, viz: The W. ½ of the S. E. ¼ and the S. W. ¼ of the N. E. ¼ of section 30, township 8 N., of R. 7 east, of 6th P. M., which pretended deed was filed for record September 7th, 1874, at 10.25 a. m., and duly recorded in record of deeds of said Lancaster county, in Book "O," page 611, a copy of which deed is herewith filed as Exhibit "L" and made a part hereof, for an undivided one-third of said lands and no more, which pretended to be conveyed to said Lincoln by the pretended deed from S. B. Galey and George L. Hilton, as per Exhibit "K," hereinbefore referred to, and same tracts were also included in the said trusts deeds to John Hilton.

And your orator charges that said Thomas P. Smith had notice of the said original trust deed to said John Hilton and of the pretended trust deeds, as hereinbefore charged, made to Alice B. Hilton and Augusta Hilton and all the other pretended deeds in this bill mentioned, and that said Smith holds said lands illegally and in fraud of the rights of your orator in the premises.

And your orator says that the above several deeds and pretended deeds hereinbefore set out and referred to in this bill constitutes the whole and complete chain of title, as appears of record, of the said Thomas P. Smith to said lands, which your orator says, under advice of counsel, is fatally defective and the pretended deeds unauthorized, illegal, null, and void, and your orator prays the court so to declare.

And your orator further says that one August F. J. Schmutte, as he is informed and believes, is in possession and pretends to claim some ownership or title to said tract of land last above described by virtue of pretended title derived through the said Thomas P.
18 Smith, and your orator prays that said Schmutte may be made a party defendant hereto and required to answer and show to the court the exact nature of his title or pretended title. A pretended deed to said Schmutte for the lands theretofore so con-

veyed to said Thomas P. Smith is filed of record Dec. 31st, 1880, at 1 o'clock p. m., and duly recorded in the records of deeds of said Lancaster county, in Book —, page —, reference to, which record is hereby made.

Your orator says that Schmutte had notice of the pretended deeds in the chain of title of said Smith and of the original trust to John Hilton and the assumed trust, as hereinbefore charged, to Alice B. and Augusta Hilton.

And your orator further says that on the 19th day of March, A. D. 1874, the said William C. Lincoln and Nora M. Lincoln, his wife, pretended to convey by way of deed of mortgage to one John M. Young, of Lancaster county, Nebraska, for the alleged consideration of $2,000, in fee simple, the undivided one-third of the following lands, viz: The S. E. ¼ of the N. W. ¼ and the E. ½ of the S. W. ¼ and the S. W. ¼ of the S. E. ¼ of section 19, township 8 N., of R. 7 E., of 6th P. M.

Which mortgage was given to secure the payment of $2,000 in 15 months from the date of said mortgage, with 12 per ct. per annum interest; which mortgage was filed for record March 20, 1874, and duly recorded in the records of mortgages in said Lancaster county, in Book "G," page 447, a copy of which, marked Exhibit "M," is herewith filed and made a part hereof.

Your orator says that said mortgage deed was wholly unauthorized, illegal, and void; that said John M. Young had notice of the said original trust deed to John Hilton and of the pretended trust deeds, as hereinbefore charged, made to Alice B. and Augusta Hilton and of all the other deeds or pretended deeds as charged in this bill.

19 And your orator says that the State National Bank of Lincoln, Neb., a bank doing business and residing in the city of Lincoln, Nebraska, as he is informed and believes, became the owner of said mortgage by the assignment of the same and afterwards proceeded to foreclose said mortgage, and afterwards, on the sale of the said mortgaged premises or some portion thereof, the said State National Bank of Lincoln purchased said premises or some portion thereof, and your orator asks that said bank may be compelled to answer and show its title to said land, if any, had thereby.

And your orator states that the said State National Bank of Lincoln had notice of all the deeds and pretended deeds and trusts and pretended trusts the same as had said John M. Young, as hereinbefore charged in this bill.

And your orator says, under advice of counsel, that said pretended deed and title of the said State National Bank of Lincoln is wholly unauthorized, illegal, and void, and your orator asks the court so to declare.

And your orator further says that on the 1st day of November, 1873, the said William C. Lincoln and Nora M. Lincoln, his wife, pretended to convey by way of deed of mortgage, in fee simple, to the Otoe County National Bank of Nebraska City, for the alleged consideration of $500, the undivided one-third of the S. W. ¼ of the N. W. ¼ and the W. ½ of the S. W. ¼ of section 14, T. 9 N. of R. 6

E. of the 6th P. M.; which mortgage was given to secure the payment of $500 in one year from its date, with ten per cent. per annum interest, which was filed for record 10th November, 1873, and duly recorded in the records of mortgages of said Lancaster county, in Book "G," page 133, reference to which said record is hereby made.

20 Your orator says, under advice of counsel, that said mortgage deed to the said Otoe County National bank was unauthorized, illegal, null, and void; that said Otoe County National bank had notice of the said original trust deed to John Hilton at the time and of all the other deeds or pretended deeds, as hereinbefore charged in this bill, and of the whole title or pretended title of said Lincoln to said land, which are parts of the lands contained in the original trust deed to said John Hilton, and that said mortgage deed was made in fraud of the rights of your orator in the premises.

And your orator further says that afterwards, on the — day of ——, the said Otoe County National bank proceeded to foreclose said mortgage in district court of 2nd judicial district of Nebraska, for Lancaster county, and, April 17, 1885, obtained judgment for foreclosure, and afterwards the said land was sold under same and purchased by the said Otoe County National Bank of Nebraska City for $300, and on 30th day of July, 1875, a deed was made to said bank for said undivided one-third of said land, which was filed for record July 30th, 1875, at 10.50 a. m., and recorded in the record of deeds of said Lancaster county, in Book "R," page 61, reference to which record is hereby made, and your orator prays that said bank may be compelled to answer and show exactly what title it has to said land.

And your orator says, under advice of counsel, that said pretended deed to said Otoe County National bank is unauthorized, illegal, null, and void, and your orator asks the court so to declare.

And your orator further says that there appears on the records of mortgages of said Lancaster county, Nebraska, a mortgage deed

21 from Augusta Hilton to George H. Hilton, your orator, and assigned by him to the Otoe County National Bank of Nebraska City, dated 1st Feb'y, 1869, and recorded 8th Feb'y, 1869, in record of mortgages, Book "A," page 243, on the S. E. ¼ of section 2, T. 9 N., R. 6 E., of 6 P. M.

That said mortgage was afterwards foreclosed by said Otoe County National Bank of Nebraska City; which mortgage appears on the record aforesaid as if unpaid and is uncancelled on said record.

And your orator further says that said mortgage and the decree of foreclosure under it has been fully paid; that said mortgage, being uncancelled on the record, appears as a cloud or lien upon your orator's title to his undivided portion of said land.

And your orator prays that when the said Otoe County National bank answers, as your orator requires it to do, to the other matters alleged in this bill as to them, they may answer as to the abovementioned mortgage and the foreclosure and payment of the same as charged, and if they have or pretend to have any claim or lien

on said lands, and, if not, that the court may require them to cancel said mortgage.

And your orator prays the court that it may declare, upon final hearing of this case, the interest and estate your orator may have therein in the *h*ands and tenements described in the original trust aforesaid since the death of George L. Hilton, one of the *cestui que trusts* in the said estate.

Your orator submits, under advice of counsel, that he is entitled to the possession and ownership of the lands held in trust by said John Hilton for the use and benefit of said George L. Hilton; that upon his death ⅓ part of said trust estate ceased to exist and by law reverted to your orator, said trust being limited to a life estate only.

22 Your orator insists also that should your honors deem that said trust estate was a continuing trust, then in that event your orator is entitled to the same by the law of descent of the State of Nebraska.

And your orator further states that he moved from the State of Nebraska to the State of Ohio in October, 1873, and was a non-resident of Nebraska, and did not return to the State of Nebraska until on or about the middle of July, 1883, when he learned the facts hereinbefore related in this bill.

And your orator, being remediless by the strict rules of the common law, only has his recourse in equity, which he now seeks by his bill.

And your orator prays that upon final hearing of this case the true declaration of the estate as above required in the lands in controversy under said trust may be made, and the following relief may be granted your orator and decree rendered accordingly:

1st. That the deed given by the said John Hilton to said Alice B. Hilton, and the one given by Alice B. Hilton to Augusta Hilton, and the one given by the said Augusta Hilton to George L. Hilton in his own right in fee simple for the undivided one-third of said lands, and the two deeds from George L. Hilton to Smith B. Galey for the undivided one-third in fee of the lands therein described, and the deed from Smith B. Galey and George L. Hilton to William C. Lincoln for the undivided one-third in fee of the lands therein described, and the two deeds from William C. Lincoln and wife to James E. Jones in fee simple, being for the undivided one-third of the lands thorein described, and the deed from William C. Lincoln and wife to Thomas P. Smith in fee simple for all the lands in said deed described, or if it can be done and the separate and distinct interest in the land therein described devided, then for the

23 undivided one-third of the lands therein described, and the mortgage deed from William C. Lincoln and wife to John M. Young in fee simple, being for the undivided one-third of the lands therein described, and the deed made on the foreclosure, made to the State National Bank of Lincoln, and the mortgage made by William C. Lincoln and wife to the Otoe County National Bank of Nebraska City, and the deed made to said bank under the foreclosure of said mortgage and for the undivided one-third of the land in

fee simple described in the deed from Thomas W. Lowrey and wife to Jacob Rocke—

And each and all of the said pretended deeds and mortgages be set aside and ordered cancelled and declared null and void, so far as the undivided one-third interest of your orator is concerned in the lands in said deed mentioned.

2nd. That since the death of the said George L. Hilton the undivided one-third of all the lands described in the deed from George H. Hilton (your orator) to John Hilton in trust for the benefit of his sons, George L., James F., and Joseph B. Hilton, in equal portions, the reversion of the portion of said George L. Hilton may be declared to be vested in fee simple in your orator, George H. Hilton, by the law governing lands in trust or by the law of descent; that his right and title to the undivided one-third of said lands may be declared free from any cloud thereon, so far as each or any of the above-mentioned pretended deeds for that portion of said lands is concerned, and his title quieted.

And your orator prays that all the pretended deeds of conveyances and mortgages heretofore referred to and recited herein making clouds upon the title to said lands may be declared by the court as having been made without authority and therefore illegal, null, and void and of none effect.

24 And that your orator may be declared the lawful owner of an undivided one-third of all said lands so deeded by him to the said John Hilton in trust, as first stated in his said deed to John Hilton.

All such doings, actings, and pretences of said defendant are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law and is relievable only in a court of equity, where a matter of this nature is cognizable and relievable.

And your orator further say- that the matters in controversy between the parties hereto in this cause exceed five hundred dollars, exclusive of costs, and your orator asks that the defendants may be required to answer in the premises, but not under oath or affirmation, the benefit of which is expressly waived by the complainant except as to Alice B. Ducharme and Augusta Hilton, who are required to answer all and singular the matters as stated in this bill under their respective oaths.

And your orator prays that the following persons, who appear, as herein related, to have some interest in the matter in controversy in this bill, may be made parties defendant thereto, and that a writ of subpœna may issue for them and each of them, thereby commanding them and each of them respectively, to wit, John Hilton, Joseph B. Hilton, James F. Hilton Alice Ducharme, Augusta Hilton, Nora M. Lincoln, James E. Jones, Thomas W. Lowrey, John M. Young, Jacob Rocke, Thomas P. Smith, August E. H. Schmutte, the State National Bank of Lincoln, Neb., and the Otoe County National Bank of

Nebraska City, Neb., at a certain time, under a certain penalty
25 therein to be limited, personally to appear before this honorable court and then and there full and true and perfect answers make to all and singular the premises, and, further, to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem agreeable to equity and good conscience.

And your orator will ever pray.

J. C. CROOKER,
Solicitor for Complainant.

UNITED STATES OF AMERICA,
District & State of Nebraska, Lancaster County, } *ss:*

George H. Hilton, being first duly sworn, says he is the complainant in the foregoing bill of complaint against the respondents therein named; that he has read the above bill and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

GEO. H. HILTON.

Subscribed in my presence and sworn to before me this 15th day of September, 1883.

[SEAL.] L. W. BILLINGSLEY,
Notary Public.

Attached to said bill are exhibits from "A" to "M" in words and figures following, to wit:

EXHIBIT "A."

Quitclaim Deed.

George H. Hilton to John Hilton. } Filed for record Dec. 24th, A. D. 1867, at 2 o'clock p. m.

Know all men by these presents that George H. Hilton, of Hamilton county, Ohio, in consideration of one dollar, and natural love, &c., to him paid by John Hilton, of Madison county, Iowa,
26 the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said John Hilton, his heirs and assigns forever, in trust for benefit of my sons, George L., James F., and Joseph B. Hilton, in equal portion, said trustees having authority to sell and convey all or any portion, at any time or in any way at his discretion for their benefit, — the following-described real estate situate in the Territory of Nebraska, viz: W. ½ of S. E. ¼ and S. W. ¼ of N. E. ¼ of sec. 30, township 8 N. of range 7 E., and S. W. ¼ of N. W. ¼ and N. W. ¼ of S. W. ¼ of sec. 14, and N. E. ¼ of S. E. ¼ of sec. 15, in township 9 N. of range 6 E., and W. ½ and S. E. ¼ of N. E. ¼ of sec. 29, T. 8 N. of R. 7 E., and S. W. ¼ of sec. 11, T. 9 N. of R. 6 E., and S. E. ¼ of N. W ¼ and E. ½ of S. W. ¼ and S. W. ¼ of S. E. ¼

of sec. 19, T. 8 N. of R. 7 E., and N. W. ¼ of N. W. ¼ of sec. 3 and N. E. ¼ of N. E ¼ of sec. 4, T. 7 N. of R. 7 E., and S. E. ¼ of S. E. ¼ of sec. 33 and S. W. ¼ of S. W. ¼ of sec. 34, T. 8 N. of R. 7 E., and N. W. ¼ sec. 18, T. 8 N. of R. 7 E., and N. E. ¼ of sec. 6, T. 8 N. of R. 7 E., and S. W. ¼ of sec. 2, T. 9 N. of R. 6 E., and S. W. ¼ sec. 11, T. 9 N. of R. 6 E., and S. E. ¼ of sec. 2, T. 9 N. of range 6 E., and S. E. ¼ of sec. 11, T. 9 N. of R. 6 E., and S. ½ of N. W. ¼ of sec. 14 and S. E. ¼ of N. E. ¼ of sec. 15, T. 10 N. of R. 6 E., and N. ½ of N. W. ¼ and N. W. ¼ of N. E. ¼ of sec. 21, T. 10 N. of R. 6 E., and W. ½ and N. E. ¼ of N. E. ¼ of sec. 11, T. 9 N. of R. 6 E., and E. ½ of S. E. ¼ of sec. 1 and N. E. ¼ of N. E. ¼ of sec. 12, T. 8 N. of R. 6 E., and E. ½ of N. W. ¼ and N. E. ¼ of S. W. ¼ of sec. 6, T. 8 N. of R. 7 E, being situated in Clay and Lancaster counties, *of* said Nebraska Territory.

And all the estate, title, and interest of the said Geo. H. Hilton, either in law or in equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging; to have and to hold the same to the only proper use of the said John Hilton, in trust as aforesaid, his heirs and assigns forever; and the
27 said Geo. H. Hilton, for himself and heirs, executors, — administrators, do- hereby covenant with the said John Hilton, his heirs and assigns, that the title so conveyed is clear, free, and unincumbered by any act of the said Geor. H. Hilton.

In witness whereof the said Geo. H. Hilton has hereunto set his hand and seal this 26th day of October, in the year of our Lord one thousand eight hundred and sixty-one.

GEO. H. HILTON. [SEAL.]

Signed, sealed, acknowledged, and delivered in presence of us—
L. C. WOOD.
JEREMIAH LYNCH.

THE STATE OF OHIO, } ss:
Hamilton County, }

Be it remembered that on the thirtieth day of October, in the year of our Lord one thousand eight hundred and sixty-one, before me, the subscriber, a notary public in and for said county, personally came George H. Hilton, the grantor in the foregoing conveyance, and acknowledged the signing and sealing thereof to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal on the day and year aforesaid.

[L. S.]

THOS. B. PAXTON,
Notary Public, Ham. Co., Ohio.

I accept the trust as above stated.

Witness my hand and seal this 20th day of November, A. D. 1861.

JOHN HILTON. [SEAL.]

EXHIBIT "B."

Warranty Deed.

28 John Hilton to Alice B. Hilton. } Filed for record Jan'y 10th, A. D. 1868, at 7 o'clock p. m.

Know all men by these presents that John Hilton and Margaret Hilton, his wife (the John Hilton as trustee as hereafter stated), of Madison county, State of Iowa, in consideration of the sum of one thousand dol-ars in hand paid, do hereby sell and convey unto Alice B. Hilton, of Hamilton county and State of Ohio, the following-describ. premises, to wit: Situated in the Territory of Nebraska, being the W. ½ of S. E. ¼ and S. W. ¼ of N. E. ¼ of sec. 30, township 8 N. of range 7 E., and S. W. ¼ of N. W. ¼ and N. W. ¼ of S. W. ¼ of sec. 14 and N. E. ¼ of S. E. ¼ of sec. 15, T. 9 N., R. 6 E., and W. ½ and S. E. ¼ of N. E. ¼ of sec. 29, T. 8 N., R. 7 E., and S. W. ¼ of sec. 11, T. 9 N., R. 6 E., and S. E. ¼ of N. W. ¼ and E. ½ of S. W. ¼ and S. W. ¼ of S. E. ¼ of sec. 19, T. 8 N., R. 7 E., and N. W. ¼ of N. W. ¼ of sec. 3 and N. E. ¼ of N. E. ¼ of sec. 4, T. 7 N., R. 7 E., and S. E. ¼ of S. E. ¼ of sec. 33 and S. W. ¼ of S. W. ¼ of sec. 34, T. 8 N., R. 7 E., and N. W. ¼ sec. 18, T. 8 N., R. 7 E., and N. E. ¼ of sec. 6, T. 8 N., R. 7 E., and S. W. ¼ of sec. 2, T. 9 N., R. 6 E., and S. W. ¼ sec. 11, T. 9 N., R. 6 E., and S. E. ¼ of sec. 2, T. 9 N., R. 6 E., and S. E. ¼ of sec. 11, T. 9 N., R. 6 E., and S. ½ N. W. ¼ of sec. 14 and S. E. ¼ of N. E. ¼ of sec. 15, T. 10 N., R. 6 E., and N. ½ of N. W. ¼ and N. W. ¼ of N. E. ¼ of sec. 21, T. 10 N., R. 6 E., and W. ½ and N. E. ¼ of N. E. ¼ of sec. 11, T. 9 N., R. 6 E., and E ½ of S. E. ¾ of sec. 1 and N. E. ¼ of N. E. ¼ of sec 12, T. 8 N., R. 6. E., and E. ½ of N. W. ¼ and N. E. ¼ of S. W. ¼ of sec. 6, T. 8 N., R. 7 E., being situated in Clay and Lancaster counties, *of* said Territory, and being the same premises conveyed by Geo. H. Hilton to said John Hilton in trust, &c., by deed dated 26th Oct., 1861; and we do hereby covenant to warrant and defend the said premises against the lawful claims of ourselves, and the said Margaret Hilton hereby relinquishes all her right of dower in and to the above-
29 described premises. The said John Hilton herein named conveys as trustee of Geo. L. and Joseph B. and James F. Hilton.

Signed this sixteenth day of September, A. D. 1863.

JOHN HILTON. [SEAL.]
MARGARET HILTON. [SEAL.]

In presence of—
LEWIS MAYO.
J. G. HILTON.

STATE OF IOWA, } ss.
Madison County, }

On this 16 day of September, A. D. 1863, before me, county judge in and for said county, personally came John Hilton and Margaret

Hilton, personally to me known to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary act and deed.

Witness my hand and official seal. Done at Winterset, Iowa, on the date last above written.

[U. S. *revenue* stamp, 1.00.]

[L. S.] LEWIS MAYO,
County Judge.

EXHIBIT "C."

Copied from Deed Record "A," page 273.

Quitclaim Deed.

Alice B. Hilton to Augusta Hilton. } Filed for record January 10th, A. D. 1868, at 8 p. m.

"Know all men that Alice B. Hilton, of the city of Cincinnati, Ohio, in consideration of natural love and affection and of the sum of one dollar to her paid by Augusta Hilton, of the same place, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to said Augusta Hilton, her heirs and assigns, the following real estate situated in the Territory of Nebraska, in Lancaster county, viz: The N. W. ¼ of N. W. ¼ of section 3, township 7, range 7; N. E. ¼ of N. E. ¼, section 4, township 7, range 7; S. E. ¼ of S. E. ¼ sec. 33, 7 8, R. 7; S. W. ¼ of S. W. ¼ of *of* sec. 34, T. 8, R. 7; W. ½ of S. E. ¼ and S. W. ¼ of N. E. ¼ of sec. 30, T. 8, R. 7; S. W. ¼ of N. W. ¼ and N. W. ¼ of S. W. ¼ of sec. 14, T. 9, R. 6; N. E. ¼ of S. E. ¼ sec. 15, T. 9, R. 6; W. ½ and S. E. ¼ of N. E. ¼ of sec. 29, T. 8, R. 7, and S. W. ¼ of sec. 11, T. 9, R. 6, and S. W. ¼ of sec. 2, T. 9, R. 6, and S. ½ of N. W. ¼ of sec. 14, T. 10, R. 6, and S. E. ¼ of N. E. ¼ of sec. 15, T. 10, R. 6; also the following in said Lancaster county, Nebraska, viz: The S. E. ¼ of N. W. ¼ and E. ½ of *of* S. W. ¼ and the S. W. of S. E. ¼ of section 19, town. 8, range 7; the N. W. ¼ of section 18, town. 8, range 7; the E. ½ S. E. ¼ section 1, town. 8, range 6; the N. E. ¼ of N. E. ¼ of section 12, town. 8, range 6; the N. E. ¼ of S. W. ¼ and the E. ½ of the N. W. ¼ of section 6, town. 8, range 7; the S. E. ¼ of section 2, town. 9, range 6; the S. E. ¼ of sec. 11, town. 9, range 6, and the W. ½ of the N. E. ¼ and the N. E. ¼ of the N. E. ¼ of section 11, town. 9, range 6, all which being the same premises conveyed to the said Alice B. Hilton by John Hilton, trustee for George L., James F., and Joseph B. Hilton, by deed dated 16th September, 1863, together with all the privileges and appurtenances to the same belonging.

6, 8, 7, N. E. ¼ not deeded.

To have and to hold the same to the said Augusta Hilton, her heirs and assigns, forever.

Hereby covenanting that the title so conveyed is clear, free, and unincumbered by any act of the grantor herein.

In witness whereof the said Alice B. Hilton (who is unmarried)

has hereunto set her hand and seal this 22nd day of November, in the year eighteen hundred and sixty-five.

ALICE B. HILTON. [SEAL.]

Signed, sealed, and delivered in presence of—
R. A. W. BRUHL.
M. P. BIDDLE.

STATE OF OHIO, }
County of Hamilton, } *ss:*

Be it remembered that on this twenty-second day of November, in the year of our Lord one thousand eight hundred and
31 sixty-five, before me, the subscriber, a notary public in and for said county, personally came Alice B. Hilton, the grantor in the above conveyance, and acknowledged the signing and sealing thereof to be her voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

W. P. BIDDLE,
Notary Public for Hamilton County, Ohio."

"EXHIBIT D."

Warranty Deed.

Augusta Hilton to George L. Hilton. } Filed for record Nov. 8th, 1871, 3.50 p. m.

This indenture, made this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and seventy-one, between Augusta Hilton, at present of St. Catherine, Canada, of the first part, and George L. Hilton, of Lancaster county, Nebraska, U. S. A., of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, and natural love and affection, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents do- grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, the undivided third part of all the following-described lots, pieces, or parcels of land situated in the county of Lancaster and State of Nebraska, to wit: The N. W. ¼ of the N. W. ¼ of section 3, township 7, range 7; the N. E. ¼ of the N. E. ¼ of sec. 4, town. 7, range 7; the S. E. ¼ of the S. E. ¼ of sec. 33, town. 8, range 7; the S. W. ¼ of S. W. ¼ of sec. 34, town. 8, range 7; the W. ½ of the S. E. ¼
32 and the S. W. ¼ of the N. E. ¼ of sec. 30, town. 8, range 7; the S. W. ¼ of the N. W. ¼ and the N. W. ¼ of the S. W. ¼ of sec. 14, town. 9, range 6; the N. E. ¼ of the S. E. ¼ of sec. 15, town. 9, range 6; the W. ½ of the N. E. ¼ and the S. E. ¼ of the N. E. ¼ of sec. 29, town. 8, range 7; the S. E. ¼ of the N. W. ¼ and the E. ½

of the S. W. ¼ and the S. W. ¼ of the S. E. ¼ of sec. 19, town. 8, range 7; the northwest quarter of sec. 18, town. 8, range 7; the northeast quarter and the N. E. ¼ of the S. W. ¼ and the east ½ of the N. W. ¼ of sec. 6, town. 8, range 7; the southwest quarter of sec. 11, town. 9, range 6.

The southeast quarter of sec. 11, town. 9, range 6; the southwest quarter of sec. 2, town. 9, range 6 (except the portion of about 40 acres heretofore sold to John Cadman); the southeast quarter of sec. 2, town. 9, range 6 (except the 20 acres this day sold and conveyed to Chas. Ducharme); the S. ½ of the N. W. ¼ of sec. 14, town. 10, range 6, and the S. E. ¼ of the N. E. ¼ of sec. 15, town. 10, range 6, and the W. ½ of the N. E. ¼ of sec. 11, town. 9, range 6, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and reversion and reversions, remainder and remainders, rents, issues, and profits thereof and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above bargained and described, with the appurtenances, to the only proper use and benefit of the said party of the second part, his heirs and assigns forever.

And the said Augusta Hilton, party of the first part, hereby expressly waive-, release-, and relinquishes unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the
33 above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Augusta Hilton, party of the first part, for herself, her heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or natures soever, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part has hereunto set her hands and seal the day and year first above written.

AUGUSTA HILTON. [SEAL.]

[50 cts. U. S. R. S.]

Signed, sealed, and delivered in presence of—
ALBERT G. BROWN.

CANADA, PROVINCE OF ONTARIO, } *ss:*
County of Lincoln, }

I, Albert G. Brown, of the town of St. Catherine, in the county of Lincoln and province of Ontario, a duly appointed notary public in and for said province, do certify that on this twenty-fifth
34 day of August, A. D. 1871, before me, the subscriber, a notary public duly appointed and qualified for and residing in said county, personally appeared Augusta Hilton, to me known to be the identical person described in and whose name is affixed to the foregoing conveyance as grantor, and she acknowledged the same to be her voluntary act and deed.

In testimony whereof I have hereunto set my hand and official seal, at St. Catherines, in said county, the day and year last-above written.

[SEAL.] ALBERT G. BROWN,
Notary Public.

EXHIBIT E.

Warranty Deed.

George L. Hilton to Smith B. Galey. } Filed for record Sept. 12th, 1872, at 3 p. m.

Know all men by these presents that I, George L. Hilton, of the county of Lancaster and State of Nebraska, in consideration of the sum of three thousand five hundred ($3,500) dollars in hand paid by Smith B. Galey, of the county of Lancaster, State of Nebraska, *I* do hereby sell and convey unto the said Smith B. Galey the following-described real estate, to wit: The one undivided one-third interest in the northeast quarter (¼) of section No. (6) and the northeast quarter of the southwest quarter (¼) and the east half of the northwest quarter (¼) of section number six (6), all in town. eight (8), of range number seven (7) east, of the 6th P. M., containing one hundred and eighty acres, more or less; to have and to hold the said premises unto the said Smith B. Galey, his heirs and assigns forever, in fee simple; and I do hereby covenant with the said Smith B. Galey, his heirs and assigns, that I am lawfully seized of said premises; that they are free from incumbrances; that I have good right and lawful authority to sell and convey the same, and
35 that I will forever warrant and defend the same against the lawful claims of all persons whomsoever.

Signed this eleventh day of September, A. D. 1872.

GEORGE L. HILTON. [SEAL.]

[$3.50 U. S. R. S.]

Witness:
JAS. E. PHILPOTT.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this eleventh day of September, A. D. 1872, before me, the subscriber, a notary public duly appointed and qualified for and residing in said county, personally came George L. Hilton, personally to me known to be the identical person whose name is affixed to the foregoing conveyance as grantor, and he acknowledged the same to be his voluntary act and deed.

In witness whereof I have hereunto subscribed my name and affixed my official seal, at Lincoln, Nebraska, on the date last above written.

[SEAL.] JAMES E. PHILPOTT,
Notary Public.

EXHIBIT F.

Copied from record of deeds, Book K, page 442.

Warranty Deed.

George L. Hilton to Smith B. Galey. } Filed for record Sept. 17, 1872, at 3.35 p. m.

This indenture, made this 16th day of September, A. D. 1872, between George L. Hilton, of Lincoln, in Lancaster county, State of Nebraska, of the first part, and Smith B. Galey, of the same place, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five thousand dollars, $5,000, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents do- grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, all the following-
36 described lots, pieces, or parcels of land situated in the county of Lancaster and State of Nebraska, to wit: The undivided one-third interest in the N. W. ¼ of the N. W. ¼ of sec. 3, town. 7, range 7; the N. E. ¼ of the N. E. ¼ of sec. 4, town. 7, range 7; the S. E. ¼ of the S. E. ¼ of sec. 33, town. 8, range 7; the S. W. ¼ of the S. W. ¼ of sec. 34, town. 8, range 7; the W. ½ of S. E. ¼ and S. W. ¼ of N. E. ¼ of sec. 30, town. 8, range 7; the S. W. ¼ of the N. W. ¼ and the N. W. ¼ of the S. W. ¼ of sec. 14, town. 9, range 6; the N. E. ¼ of the S. E. ¼ of sec. 15, town. 9, range 6; the W. ½ of the N. E. ¼ and the S. E. ¼ of the N. E ¼ of sec. 29, town. 8, range 7; the S. E. ¼ of the N. W. ¼ and the E. ½ of the S. W. ¼ and S. W. ¼ of S. E. ¼ of sec. 19, town. 8, range 7; the N. W. ¼ of sec. 18, town. 8, range 7; the S. W. ¼ of sec. 11, town. 9, range 6; the S. E. ¼ of sec. 11, town. 9, range 6; the S. W. ¼ of sec. 2, town. 9, range 6 (except the portion of about 40 acres heretofore sold to John Cadman); the S. E. ¼ of sec. 2, town. 9, range 6 (except twenty acres sold and conveyed to Charles Ducharme); the S. ½ of the N. W. ¼ of sec. 14,

town. ten (10), range 6, and S. E. ¼ of N. E. ¼ of sec. 15, town. 10, range 6, and W. ½ of N. E. ¼ of sec. 11, town. 9, range 6, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, to the only proper use and benefit of the said party of the second part, his heirs and assigns forever.

And the said George L. Hilton, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, his heirs, executors, and administrators and
37 assigns, and all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads; and the said George L. Hilton, party of the first part, for himself, his heirs, executors, administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee simple and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever, except the taxes for the years 1871 and 1872, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

GEORGE L. HILTON. [SEAL.]

[35 U. S. R. S.]

Signed, sealed, and delivered in presence of—
JAS. E. PHILPOTT.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this sixteenth day of September, A. D. 1872, before me,
38 the subscriber, a notary public duly appointed and qualified for and residing in said county, personally appeared George L. Hilton, to me known to be the identical person described in and whose name is affixed to the foregoing conveyance as grantor, and he acknowledged the same to be his voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal, at Lincoln, in said county, the day and year last above written.

[SEAL.] JAMES E. PHILPOTT,
Notary Public.

EXHIBIT "G."

Warranty Deed.

S. B. Galey and Geo. L. Hilton to William C. Lincoln. } Filed for record Sept. 18, 1873, at 2 p. m. R. O. Phillips, Co. clerk, by J. P. Hebard, dep.

This indenture, made this 18th day of September, A. D. 1873, between S. B. Galey and George L. Hilton, of Lancaster county, State of Nebraska, of the first part, and William C. Lincoln, now of the same place, of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of two thousand two hundred dollars in hand paid, the receipt whereof is hereby acknowledged to be in hand paid by said party of the second part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, the undivided one-third part of all the following-described lots, pieces, or parcels of land situate in Lancaster county, in the State of Nebraska, to wit:

The N.W. ¼ of the N. W. ¼ of section 3, township 7, range 7; the N. E. ¼ of the N. E. ¼ of section 4, town. 7, range 7; the S. E. ¼ of the S. E. ¼ of section 33, town. 8, range 7; the S. W. ¼ of the S. W. ¼ of section 34, town. 8, range 7; the W. ½ of the S. E. ¼ and the S. W. ¼ of the N. E. ¼ of section 30, town. 8, range 7; the S. W. ¼ of the N. W. ¼ and the N. W. ¼ of the S. W. ¼ of section 14, town. 9, range 6; the N. E. ¼ of the S. E. ¼ of section 15, town. 9, range 6; the W. ½ of the N. E. ¼ and the S. E. ¼ of the N. E. ¼ of section 29, town. 8, range 7; the S. E. ¼ of the N. W. ¼ and the E. ½ of the S. W. ¼ and the S. W. ¼ of the S. E. ¼ of section 19, town. 8, range 7; the northwest quarter of section 18, town. 8, range 7; the northeast quarter and the N. E. ¼ of the S. W. ¼ and the E. ½ of the N. W. ¼ of section 6, town. 8, range 7; the southwest quarter of section 11, town. 9, range 6; the southeast quarter of section 11, town. 9, range 6; the southwest quarter of section 2, town. 9, range 6 (except the portion of about 40 acres heretofore sold to John Cadman); the southeast quarter of section 2, town. 9, range 6 (except 20 acres sold to Charles Ducharme); the S. ½ of the N. W. ¼ of section 14, town. 10, range 6, and the S. E. ¼ of the N. E. ¼ of section 15, town. 10, range 6, and the W. ½ of the N. E. ¼ of section 11, town. 9, range 6, together with all and singular the hereditaments and appurtenances *and* thereunto *thereunto* belonging or in anywise appertaining, with the rents, issues, and profits thereof and all the estate, right, title, or interest of the said party of the first part, either at law or in equity; to have and to hold the said premises to the

said party of the second part, his heirs and assigns forever; and the said S. B. Galey hereby, for himself, his heirs, executors, and administrators, covenants and agrees with the said party of the second part, his heirs, executors, administrators, and assigns, that he has not sold, assigned, leased, bargained, aliened, or conveyed or mortgaged the above-described premises or any part thereof, and that the above-bargained premises and every part thereof he will forever warrant and defend against all and every person or
40 persons lawfully claiming or to claim the same or any part thereof, by, through, or under him, the said S. B. Galey, at any time, except taxes due or to become due.

In testimony whereof the said parties have hereunto set their hands the day and year above written.

SMITH B. GALEY.
GEORGE L. HILTON.

Signed and delivered in presence of—
WALTER J. LAMB.

STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 18th day of September, A. D. 1873, before me, the undersigned notary public, personally appeared S. B. Galey and Geo. L. Hilton, to me well and personally *to me* known, and they severally acknowledged the foregoing conveyance to be their voluntary act and deed and affixed their names thereto as grantors in my presence.

In testimony whereof I have hereunto set my hand and affixed my official notarial seal the day and year last above written.

[SEAL.] WALTER J. LAMB,
Notary Public.

EXHIBIT "H."

This indenture, made this eighteenth day of March, in the year of our Lord one thousand eight hundred and seventy-four, between William C. Lincoln and Nora M. Lincoln, his wife, of Lancaster county, Nebraska, of the first part, and James E. Jones, of Saline county, Nebraska, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of nine hundred and eighty-three dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold and by these presents do grant, convey, and confirm unto said party of the second part, his heirs and assigns, all the undivided one-third
41 interest or part in and to those certain pieces or parcels of land situated in Lancaster county, Nebraska, more particularly known and described as follows, to wit: The northeast quarter (N. E. ¼) and the east half (E. ½) of the northwest quarter (N. W. ¼) and the northeast — (N. E. ¼) (N. E ¼) of the southwest quarter (S. W. ¼) of section number six (6), in township numbered eight (8) north, of range numbered seven (7) east, of the sixth principal me-

ridian, in Nebraska, containing $286\frac{92}{100}$ acres, according to the Government survey—

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, title, interest, and claim whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, with the appurtenances, and to his heirs and assigns forever.

And the said Nora M. Lincoln, wife of the said William C. Lincoln, hereby releases and relinquishes all her right of dower in and to the above-described premises.

And the said William C. Lincoln, for himself and his heirs, executors, and administrators, does hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the said William C. Lincoln, at the time of the ensealing and delivery of these presents, *he* is lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance in fee simple of and in all and singular the above-granted premises, with the appurtenances, and has good right, full power, and lawful authority to grant and convey the same in the manner aforesaid, and that the same are now free and clear of and from all former and other grants, charges, assessments, and incumbrances of whatsoever nature except taxes due and to become due.

42 And the said William C. Lincoln, for himself and his heirs, the above-granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM C. LINCOLN. [SEAL.]
NORA M. LINCOLN. [SEAL.]

Signed, sealed, and delivered in presence of—
C. C. BURR.

THE STATE OF NEBRASKA, } ss.
Lancaster County, }

On this eighteenth day of March, A. D. 1874, before me, C. C. Burr, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared William C. Lincoln and Nora M. Lincoln, his wife, to me known to be the identical persons described in and who executed said instrument, — to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal at Lincoln, in said county, the day and year last above written.

[SEAL.] C. C. BURR,
Notary Public.

Endorsed: Copied from Deed Record N, page 617. Warranty deed. William C. Lincoln *et ux.* to James E. Jones. Filed March 20th, 1874, at 2.50 p. m. —— ——, Co. cl'k; —— ——, dep.

EXHIBIT I.

Copied from Record of Deeds, Book N, page 607.

Warranty Deed.

William C. Lincoln *et ux.* to James Edwin Jones. } Filed for record March 19, 1874, at 10.45 a..m.

43 This indenture, made this 18th day of March, in the year of our Lord one thousand eight hundred and seventy-four, between William C. Lincoln and Nora M. Lincoln, his wife, of Lancaster county, Nebraska, of the first part, and James E. Jones, of Saline county, Nebraska, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of three thousand and nine hundred ($3,900) dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold and by these presents do grant, convey, and confirm unto the said party of the second part, his heirs and assigns, all the undivided one-third (⅓) interest in and to all those certain pieces or parcels of land lying and being in the county of Lancaster and State of Nebraska, more particularly known and described as follows, to wit: The southwest quarter (S. W. ¼) save and except a part of the same sold by Augusta Hilton to John Cadman, lying on the west side of Salt creek, and the southeast quarter (S. E. ¼) save and except the west half (W. ½) of the southwest quarter (S. W. ¼) of said southeast quarter (S. E. ¼), being twenty acres sold by Augusta Hilton to Charles Ducharme of section numbered 2 (two); also the west half (W. ½) of the northeast quarter (N. E. ¼) and the southwest quarter (S. W. ¼) and the southeast quarter (S. E. ¼) save and except any portion of the last-described tracts that may have been sold by Augusta Hilton to the State of Nebraska, not exceeding 40 acres of section numbered eleven (11), all in township numbered nine (9) north, of range numbered six (6) east, of the sixth principal meridian in Nebraska, containing six hundred and twenty (620) acres, more or less,

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining:

To have and to hold the above-described premises, together-
44 with all the estate, right, title, interest, and claim whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, with the appurtenances, and to his heirs and assigns forever.

And the said Nora M. Lincoln, wife of the said William C. Lincoln, hereby releases and relinquishes all her right of dower in and to the above-described premises; and the said William C. Lincoln, for himself and his heirs, executors, and administrators, does hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the said William C. Lincoln, at the time of the ensealing and delivery of these presents, *he* is lawfully seized in his own right of a good, absolute, and indefeasible estate

of inheritance in fee simple of and in all and singular the above-granted premises, with the appurtenances, and has good right, full power, and lawful authority to grant and convey the same in the manner aforesaid, and that the same are now free and clear of and from all former and other grants, charges, assessments, and incumbrances of whatsoever nature, except taxes due and to become due: and the said William C. Lincoln, for himself and his heirs, the above-granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM C. LINCOLN. [SEAL]
NORA M. LINCOLN. [SEAL.]

Signed, sealed, and delivered in presence of—
C. C. BURR.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 18th day of March, A. D. 1874, before me, C. C. Burr, a notary public duly appointed, commissioned, and qualified for and—

45 EXHIBIT "K."

Copied from Record of Deeds, Book N, page 612.

Warranty Deed.

William C. Lincoln *et ux.* to Thomas W. Lowrey. } Filed for record March 20th, 1874, at 9.40 a. m.

This indenture, made this 19th day of March, in the year of our Lord one thousand eight hundred and seventy-four, between William C. Lincoln and Nora M., his wife, of Lancaster county and State of Nebraska, of the first part, and Thomas W. Lowrey, of the same county, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of thirty-six hundred dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold and by these presents do grant, convey, and confirm unto the said party of the second part, his heirs and assigns, all the undivided one-third part of all those certain premises lying and being in the county of Lancaster and State of Nebraska, east of the sixth principal meridian, known and described as follows, to wit: The northwest quarter of the northwest quarter of section number three, and the northeast quarter of the northeast quarter of section number four, all in township number seven north, of range number seven; also the southeast quarter of the southeast quarter of section number thirty-three, and the southwest quarter of the southwest quarter of section number thirty-four, all in town-

ship number eight north, of range number seven; also the northwest quarter of section number eighteen, in township number eight north, of range number seven east, of the sixth principal meridian, being the same premises of which the said Wm. C. Lincoln this day conveyed to the party of the second part by deed bearing date even herewith, to which deed reference is expressly hereby made;
46 the undivided two-thirds parts, as trustee of James F. Hilton and Joseph B. Hilton, under and by virtue of a decree of the district court of the 2d judicial district of Nebraska in and for Lancaster county, made and entered in said court on the 21st day of January, 1874, being a day of the November term, 1873, of said court, the two deeds being part of the same transaction, and the consideration above named being for the entire three-thirds of said premises:

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, title, and interest, dower and right of dower, and claim whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, with the appurtenances.

And the said Wm. C. Lincoln, for himself, his heirs, executors, and administrators, doth hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the said Wm. C. Lincoln, at the time of the ensealing and delivery of these presents, is lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance in fee simple of and in all and singular the above-granted premises, with the appurtenances, and has good right, full power, and lawful authority to grant and convey the same in the manner aforesaid, and that the same are now free and clear of and from all former and other grants, charges, assessments, taxes, and incumberances of whatsoever nature, except taxes to become delinquent in May, 1874, which the party of the second part hereby agrees to pay and discharge; and the said Wm. C. Lincoln and his heirs the above-granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents
47 forever defend.

In witness whereof the said party of the first part and second part have hereunto set their hands and seals the day and year first above written.

WILLIAM C. LINCOLN. [SEAL.]
NORA M. LINCOLN. [SEAL.]
THOMAS W. LOWREY. [SEAL.]

Signed, sealed, and delivered in presence of—
CHAS. O. WHEDON.

Interlineation on margin, inserting N. W. 18, 8, 7, made before execution.—C. O. W.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 19th day of March, A. D. 1874, before me, the subscriber, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared William C. Lincoln and Nora M., his wife, and Thomas W. Lowrey, to me known to be the identical persons described in and who executed the foregoing conveyance as grantors and grantees, and severally acknowledged the same to be their voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and notarial seal, at Lincoln, in said county, the day and year last above written.

[SEAL.] CHAS. O. WHEDON,
Notary Public.

EXHIBIT "L"

Copied from Record of Deeds, Book "O," page 611.

Warranty Deed.

William C. Lincoln *et ux.* } Filed for record Sept. 7, 1874, at 10.25
to } a. m. R. O. Phillips, clerk.
Thomas P. Smith. }

"This indenture, made this 24th day of August, in the year of our Lord one thousand eight hundred and seventy-four, between William C. Lincoln and Nora M. Lincoln, his wife, of
48 Lancaster county, Nebraska, of the first part, and Thomas P. Smith, of Cook county, Illinois, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of two thousand dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold and by these presents do grant, convey, and confirm unto the said party of the second part, his heirs and assigns, all the following-described real property situate in the county of Lancaster and State of Nebraska, to wit, the west half of the southeast one-fourth and the southwest one-fourth of the northeast one-fourth of section number thirty (30), in township number eight (8) north, of range number seven (7) east, of the sixth principal meridian, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, title, and interest, dower, and all claim whatsoever, as well in law as in equity, of the said parties of the first part in and to the same, with the appurtenances; and the said William C. Lincoln, for himself and for his heirs, executors, and administrators, *do* does hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part, at the time of the ensealing and delivery of these presents, are lawfully seized in their own right of a good, absolute, and indefeasible estate of inheritance in fee

simple of and in all and singular the above granted premises, with the appurtenances, and have good right, full power, and lawful authority to grant and convey the same in the manner aforesaid, and that the same are now free and clear of and from all former and other grants, charges, assessments, taxes, and incumbrances of whatsoever nature.

And the said William C. Lincoln and his heirs the above-
49 granted premises, with the appurtenances, against all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM C. LINCOLN. [SEAL.]
NORA M. LINCOLN. [SEAL.]

Signed, sealed, and delivered in presence of—
CHAS. O. WHEDON.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On this 24th day of August, A. D. 1874, before me, the subscriber, a notary public duly appointed, commissioned, and qualified for and residing in said county, personally appeared William C. Lincoln and Nora M. Lincoln, wife of the said William C., to me known to be the identical persons described in and who executed the foregoing conveyance as grantors, and they acknowledged the same to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal, at Lincoln, in said county, the day and year last above written.

[SEAL.] CHAS. O. WHEDON,
Notary Public."

Warranty. Thos. P. Smith & wife to Thos. R. Prey ($840). Date, 23d May, '79, Z. p. 611, for same land.

Mortgage. Copied from record of mortgages, Book G, page 444.

50 EXHIBIT "M."

Mortgage.

Wm. C. Lincoln, trustee, to John M. Young. } Filed for record March 20, 1874, at 10 a. m. R. O. Phillips, Co. cl'k.

This indenture, made this 19th day of March, 1874, between William C. Lincoln, trustee of James F. Hilton and Joseph B. Hilton, of Lancaster county, Nebraska, of the first part, and John M. Young, of Lancaster county, Nebraska, of the second part, witnesseth:

Whereas heretofore, to wit, on the 21st day of January, 1874, being a day in the November term, 1873, of the district court of the 2nd judicial district of Nebraska in and for Lancaster county, it was

by the said court, among other things, ordered, adjudged, and decreed in a certain suit then pending in said court, wherein the said party of the first part was plaintiff and the said James F. Hilton and Joseph B. Hilton, infants under the age of twenty-one years, by Seth Robinson, their guardian *ad litem*; George H. Hilton, Alice B. Ducharme, Augusta Hilton, Nora M. Lincoln, and George L. Hilton were defendants, that the said party of the first part be, and he thereby was, authorized and empowered to sell not to exceed one-half of certain real estate in said decree particularly mentiond and described, of which said real estate the lands and tenements hereinafter mentioned form a part, to such person or persons, at such times and on such terms as shall, in the opinion of said Lincoln, party of the first part herein, be to the best interest of said infants, provided the same could, in the opinion of the said party of the first part, be sold at its fair value, and in case the same could not be sold at its fair value, then and in that case the said party of the first part was thereby authorized and empowered to negotiate a loan not to exceed ten
51 thousand dollars, at a rate of interest not to exceed twelve per cent. per annum, and mortgage not to exceed one-half of said real estate in said decree mentioned and described as aforesaid to secure the payment of the same; and whereas the said party of the first part is unable to sell one-half of the said real estate at its fair value, and one-half of said real estate cannot be sold at its fair value, in the opinion of said party of the first part; and whereas the said party of the first part has this day, in pursuance of the said decree, negotiated a loan of two thousand dollars, to be lent and advanced by the party of the second part upon the lands and tenements hereinafter mentioned and described: Now, therefore, the said William C. Lincoln, party of the first part, in consideration of the said sum of money to be lent and advanced as aforesaid, the receipt whereof is hereby acknowledged, hath bargained, sold, and conveyed, and by these presents doth in pursuance of said decree and by virtue of the powers in him thereby vested sell, convey, and confirm, unto the said party of the second part all the undivided two-thirds part of all those certain pieces or parcels of land lying and being in the county of Lancaster and State of Nebraska, east of the sixth principal meridian, known and described as follows, to wit: The southeast quarter of the northwest quarter and the east half of the southwest quarter and the southwest quarter of the southeast quarter of section number nineteen, in township number eight north, of range number seven, being the same premises of which an undivided third part has been this day conveyed by the said party of the first part to the said party of the second part to secure the same sum of money, two-thirds of the said loan being for the use and
52 benefit of the said James F. and Joseph B. Hilton according to the terms and direction of said decree and one-third of said loan for the use and benefit of the said party of the first part, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, title, and interest, claim, and demand of the said party of the

first part herein or of the said James F. and Joseph B. Hilton ; and the said party of the first part covenants and agrees for himself, his heirs and assigns, to and with the said party of the second part that he, the said party of the first part, has good right, full power, and lawful authority to sell and convey the above-granted premises in the manner aforesaid, and that the same are now free and clear of and from all former and other grants, liens, taxes, assessments, and incumbrances whatsoever.

This conveyance is intended as a mortgage to secure the payment of the sum of two thousand dollars in fifteen months from the date of these presents, with interest at the rate of twelve per cent. per annum, according to the tenor and effect of a certain promissory note of even date herewith made by the said party of the first part, and these presents shall be void if such payment be made ; otherwise to be and remain in full force and virtue.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

WILLIAM C. LINCOLN.

Signed, sealed, and delivered in presence of—
CHAS. O. WHEDON.

THE STATE OF NEBRASKA, } ss :
Lancaster County, }

On this 19th day of March, 1874, before me, the subscriber,
53 a notary public duly commissioned and qualified for and residing in said county, personally came William C. Lincoln, personally known to me to be the same person described in and who executed the foregoing conveyance as grantor, and acknowledged the said instrument to be his voluntary act and deed.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last above written.

[SEAL.] CHAS. O. WHEDON,
Notary Public.

Appears uncancelled on the record.

Mortgage.

Recorded in Record of Mortgages, Book G, p. 447.

William C. Lincoln & Wife } Filed for record March 20, 1874, at 10
to } a. m. R. O. Phillips, C. clerk.
John M. Young. } Dated 19th March, 1874.

This mortgage is for the same am't and int. and on the undivided one-third of the same lands held by Wm. C. Lincoln in his own right, and this mortgage is the same referred to in the foregoing one above, carefully and exactly copied, the two instruments forming part of the same transaction.

Both of the above mortgages appear to be uncancelled on the record & in full force.

Upon the back of said bill and exhibits appear endorsements in words and figures following, to wit:

No. 117, Doc. H. U. S. circuit court, district of Nebraska. George H. Hilton *vs.* James E. Jones *et al.* Bill. Filed Sept. 17, 1883. Elmer D. Frank, clerk. J. C. Crooker, sol. for complainant.

Thereupon, afterwards, to wit, on the 17th day of September, 1883, a subpœna in chancery was duly issued in said case and returned and filed September 29th, 1883; which said subpœna is in words and figures following, to wit:

54 UNITED STATES OF AMERICA, } *ss:*
District of Nebraska, }

The President of the United States of America to John Hilton, Joseph B. Hilton, James F. Hilton, Alice Ducharme, Augusta Hilton, Nora M. Lincoln, James E. Jones, Thomas W. Lowrey, John M. Young, Jacob Rocke, Thomas P. Smith, August F. J. Schmuttie; The State National Bank of Lincoln, Nebraska; The Otoe County National Bank of Nebraska City, Nebr., and Smith B. Galey and William C. Lincoln, Greeting:

We command you and each of you that you appear before the judges of the circuit court of the United States for the district of Nebraska, at Omaha, on the first Monday in November next, it being the 5th day of November, A. D. 1883, to answer to the bill of complaint of George H. Hilton this day filed in the office of the clerk of said court, and then and there to receive and abide by such order and decree as shall then or thereafter be made, upon pain of the said bill being taken as confessed against you and decree pronounced accordingly.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 17th day of September, A. D. 1883, and of the Independence the 108th year.

[SEAL.] ELMER D. FRANK, *Clerk,*
By A. L. FRANK, *Deputy.*

Memorandum.

The above-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Omaha aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed and a decree entered thereon accordingly.

ELMER D. FRANK, *Clerk.*

55 Attached to said subpœna in chancery are the returns of the marshal in words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 17th day of September 1883, I received this subpœna in chancery, and on the 17th day of

September, 1883, I served the same upon the within-named James E. Jones, S. B. Galey, T. W. Lowrey, Jacob Rocke, and J. R. Richards, president of the State National bank, Lincoln, Nebraska, in Lincoln, Lancaster county, State and district of Nebraska, by delivering to and leaving with each of them a certified copy thereof, with all the endorsements thereon.

ELLIS L. BIERBOWER,
United States Marshal for the District of Nebraska,
By A. G. HASTINGS,
Deputy United States Marshal.

Marshal's Costs.

Service	14 00
R. R. fare	5 20
Subsistance	1 50
	$20 70

P'd by pl'ff.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 17th day of September, 1883, I received this subpœna in chancery, and on the 21st day of September, 1883, I served the same upon the within-named Wm. E. Hill, president of the Otoe County National Bank of Nebr. City, Neb., in Nebraska City, Otoe county, State and district of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the endorsements thereon.

ELLIS L. BIERBOWER,
United States Marshal for the District of Nebraska,
By A. G. HASTINGS,
Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 17th day of Sep-
56 tember, 1883, I received this subpœna in chancery, and on the 24th day of September, 1883, I served the same upon the within-named August F. J. Schmuttie in Lincoln, Lancaster county, State and district of Nebraska, by delivering to and leaving with him a certified copy thereof, with all the endorsements thereon.

ELLIS L. BIERBOWER,
United States Marshal for the District of Nebraska,
By A. G. HASTINGS,
Deputy United States Marshal.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 17th day of September, 1883, I received this subpœna in chancery, and that after diligent search I am unable to find the within-named defendants, John Hilton, Joseph B. Hilton, James F. Hilton, Alice Ducharme, Augusta

Hilton, Nora M. Lincoln, Thomas P. Smith, and Wm. C. Lincoln, within my district.

ELLIS L. BIERBOWER,
United States Marshal for the District of Nebraska,
By A. G. HASTINGS,
Deputy United States Marshal.

Upon the back of said subpœna in chancery appear endorsements in words and figures following, to wit: No. 117. Doc. H. Circuit court of the United States for the district of Nebraska. In chancery. George H. Hilton *vs.* James E. Jones *et al.* Subpœna in chancery, returnable to rule day, first Monday in November, 1883. Elmer D. Frank, clerk, by A. L. Frank, deputy. Returned and filed Sep. 29, 1883. Elmer D. Frank, clerk. J. C. Crooker, comp't's sol.

Thereupon, afterwards, to wit, on the 13th day of October, 1883, answer of Smith B. Galey was filed in said case; which said answer is in words and figures following, to wit:

57 In the Circuit Court of the United States for the District of Nebraska, November Term, 1883.

GEORGE H. HILTON, Complainant,
vs.
JAMES E. JONES, JOHN HILTON, SMITH B. GALEY, *et al.*, Defendants.
} Separate Answer in Equity of Smith B. Galey.

Now comes Smith B. Galey, one of the defendants named in the bill of complaint herein, and, reserving to himself all right of exception to said bill of complaint, for answer hereto—

Denies each and every averment, allegation, and statement in said bill contained charging this defendant with fraud or consciousness of fraud in the dealings, transactions, or negotiations between this defendant and one George L. Hilton and between this defendant and one Wm. C. Lincoln in the matter of the conveyance of certain real estate described in said bill of complaint to this defendant and in the matter of the conveyance of said real estate from this defendant and said Hilton to said Lincoln.

This defendant avers the truth to be that all said transactions, negotiations, and conveyances were conducted and made by this defendant in the utmost good faith and with perfect fairness on his part.

That the conveyance to said Lincoln of said real estate by this defendant and said George L. Hilton was made with the knowledge and consent and at the instance and request of the said complainant and with complainant's full and unqualified approval at the time.

That, as stated in said complaint, this defendant had, at
58 one time, an interest in and to a portion of the lands in *in* controversy described in said bill of complaint, the same being particularly described and enumerated in the schedule hereto attached and made a part hereof, marked Schedule A.

That all the right, title, and interest this defendant ever had in and to said lands he derived from and through said George L. Hilton, but that he long since, to wit, more than ten years ago, on September 18th, 1873, by deed to said Wm. C. Lincoln, parted with whatever right, title, or interest he had or may have had in and to the said property, and has never since had and has never since claimed any right, title, or interest in and to the same or any portion thereof, and hereby expressly disclaims any and all right, title, and interest in and to the same and any part thereof.

This defendant further states to your honors that it appears upon the face of the records of Lancaster county, Nebraska, where the said real estate is situated, that this defendant has no interest in the same or any part thereof, and the same also appears and is *and is* patent upon the face of the said bill of complaint herein.

This defendant therefore alleges and submits to your honors that he is wrongfully made a party to the controversy between the said complainant and those defendants who may be really and in fact interested in the subject-matter of said controversy.

This defendant therefore prays the court that the said bill of complaint be dismissed as to this defendant, and that he may recover from the said complainant his costs herein expended, and for such other and further relief as equity and good conscience may require.

SMITH B. GALEY.

R. W. BRECKENRIDGE,
Defendants' Solicitor.

59 "SCHEDULE A."

The undivided one-third interest in the northeast quarter of section No. six, and the northeast quarter of the southwest quarter and the east half of the northwest quarter of section No. six (6), all in town. eight (8), of range (7) east, of the sixth P. M. (and ⅓ of N. E. ¼ and N. E. ¼ S. W. ¼ and E. ½ N. W. ¼ 6, 8, 7); also the undivided one-third interest in the N. W. ¼ of the N. W. ¼, sec. 3, town. 7, range 7; the N. E. ¼ of the N. E ¼, sec. 4, town. 7, range 7; the S. E. ¼ of the S. E. ¼, sec. 33, town. 8, range 7; the S. W. ¼ of the S. W. ¼, sec. 34, town. 8, range 7; the W. ½ of the S. E. ¼ and S. W. ¼ of N. E. ¼ of sec. 30, town. 8, range 7; the S. W. ¼ of the N. W. ¼ and the N. W. ¼ of the S. W. ¼, sec. 14, town. 9, range 6; the N. E. ¼ of the S. E. ¼, sec. 15, town. 9, range 6; the W. ½ N. E. ¼ and S. E. ¼ of N. E. ¼, sec. 29, town. 8, range 7; the S. E. ¼ N. W. ¼ and E. ½ S. W. ¼ and S. W. ¼ S. E. ¼, sec. 19, town. 8, range 7; the N. W. ¼ of sec. 18, town. 8, range 7; the S. W. ¼ of sec. 11, town. 9, range 6; the S. W. ¼ of sec. 2, town. 9, range 6 (except about 40 acres sold to John Cadman); the S. E. ¼ of sec. 2, town. 9, range 6 (except about 20 acres sold to Charles Ducharme); the S. ½ of the N. W. ¼, sec. 14, town. 10, range 6, and W. ½ of the N. E. ¼, sec. 11, town. 9, range 6; the S. E. ¼ of sec. 11, town. 9, range 6, and the S. E. ¼ of N. E. ¼, sec. 15, town. 10, range 6.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117, doc. H. In the circuit court of

U. S. for the district of Nebraska. Geo. H. Hilton, comp't, *vs.* James E. Jones *et al.*, def'ts. Separate answer in equity of Smith B. Galey. Filed Oct. 13, 1883. Elmer D. Frank, clerk. R. W. Breckenridge, def'ts' solicitor.

Thereupon, afterwards, to wit, at the November term of said court, on the 14th day of November, 1883, the following proceedings were had and done in said cause, as appears of record on folio 818,
60 Journal "H" of said court, to wit:

GEORGE H. HILTON, Complainant, *vs.* JOHN HILTON *et al.*, Defendants. } Order on Absent Defendants. No. 117, H.

And now, on this 14th day of November, A. D. 1883, being at the November term, A. D. 1883, of the said court, it having been made to appear to the satisfaction of the said court that this is a suit commenced to set aside certain pretended conveyances of real property within the said district, and that John Hilton, Thomas P. Smith, Wm. C. Lincoln, James F. Hilton, Joseph B. Hilton, Nora M. Hilton, Alice B. Ducharme, Augusta Hilton, and John M. Young, defendants herein, are not inhabitants of and have not been found within the said district and have not voluntarily appeared in this suit, on motion of the complainant, it is considered by the court and ordered that the said defendants above named be, and they are hereby, directed to appear and plead, answer, or demur to the complainant's bill of complaint on or before the first Monday in February, 1884, and that in default thereof an order be entered in this cause taking the said bill *pro confesso*.

It is further ordered by the court that at least twenty days before the said first Monday in February, 1884, a copy of this order be served upon the said defendants wherever found, if practicable, and also upon the person or persons in possession or charge of the real property described in complainant's bill of complaint, if any there be, or in lieu thereof it is further ordered that this order be published for six consecutive weeks in the Nebraska State Journal, a newspaper published at Lincoln, in said district.

(S'g'd) GEO. W. McCRARY.
Circuit Judge.

61 Thereupon, afterwards, to wit, on the 28th day of November, 1883, replication to answer of Smith B. Galey was filed in said case; which said replication is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

GEORGE H. HILTON, Complainant,
vs.
JAMES E. JONES, JOHN HILTON, Smith B. Galey, *et als.*, Defendants.

Replication to Answer of Smith B. Galey.

The replication of George H. Hilton, complainant, to the answer of Smith B. Galey, one of the defendants in the above case.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain — sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, except that this repliant repeats the fraud of which the said defendant Galey is charged in his said bill, whereby he and the said George L. Hilton *was* induced to convey by pretended deed dated 18th September, 1873, to one William C. Lincoln the undivided one-third of the land as described in said bill.

And this repliant says that said defendant Galey having made said pretended deed to said Lincoln, although having no title to said land, as charged in the bill, it was necessary and proper to make him a party defendant thereto as a party that once pretended to have a color of title to said land described in said pretended deed
62 and through which the said defendants, Lincoln, Lowrey, Jones, and others claim title, and some of whom are in possession of part of said lands described in that deed.

And this repliant denies unequivocally that the conveyance to said Lincoln above referred to was made with the knowledge and consent and at the instance and request of this repliant or with his full and unqualified approval, and he repeats *th* that the $2,200 consideration money expressed in said pretended deed, which was grossly inadequate, was paid to said Galey alone as a *docure* by said Lincoln to get the pretended title to the property in his name and said sum demanded by said Galey as really a *quid pro quo* to him as part and parcel of the conspiracy between him and the said Lincold as charged in the bill and was acquiesced in by Lincoln in order to get the apparent title in himself, the said George L. Hilton being merely duped by said Lincoln, who was his brother-in-law, in whom he then appeared to have confidence, to sign the said pretended deed with said Galey, but without any consideration paid to said George L. Hilton for the same and whose signature to said deed shows want of confidence of both Galey and Lincoln as to Galey's title to the lands and the combined conspiracy to get the said George L. Hilton's name to the deed aforesaid, without that there is no other matter or thing in said defendants' answer contained material or effectual for this repliant to reply to which is not herein and hereby well and sufficiently replied to, traversed, or denied; all which matters and

things this repliant is ready to aver and prove as this court shall award and prays as in and by his said bill he hath prayed.

G. H. HILTON.

J. C. CROOKER, *Of Counsel.*

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 117, H. Circuit court U. S. George H. Hilton *vs.* James E. Jones, Smith B. Galey, & others. Replication to answer of Smith B. Galey. Filed Nov. 28, 1883. Elmer D. Frank, clerk.

63 Thereupon, afterwards, to wit, on the 13th day of December, 1883, answer of James F. & Joseph B. Hilton was filed in said case; which said answer is in words and figures following, to wit:

Bill.

In the Circuit Court of the United States for the District of Nebraska, to the November Term, 1883.

JAMES F. HILTON and JOSEPH B. HILTON, Impleaded, &c., }
vs. }
GEORGE H. HILTON. }

The joint and several answer of James F. & Joseph B. Hilton, two of the defendants, to the bill of complaint of George H. Hilton, complainant.

These defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto say: They admit that complainant is their father, and that he executed and delivered the deed to John Hilton which is described in said bill, the complainant then being the owner of the premises therein described, the construction & effect of which deed is a question of law for the final decision of this court.

They neither admit nor deny the allegations of said bill as to the various other conveyances of said premises and the knowledge that the respective grantees therein had of the character of the title involved, but leave complainant to make proof thereof. They admit the death of George L. Hilton, as alleged in said bill. The defendants, respecting the allegations in said bill touching the law of descent, say that that is a question also of law for the decision of the court, which they are advised they are not called upon to admit or deny.

And now, having answered the said bill of complaint as fully as hey are advised it is necessary for them to do, they pray to be hence lismissed.

JAMES F. HILTON,
JOSEPH B. HILTON,
By JONAS HUTCHISON, *Their Att'y.*

JONAS HUTCHISON,
Solicitor for said Respondents.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117, doc. H. U. S. circuit court, dist. of Nebraska. In chancery. George H. Hilton *vs.* James E. Jones *et al.* Answer of James F. and Joseph B. Hilton. Filed Dec. 13, 1883. Elmer D. Frank, clerk. Jonas Hutchison, sol'r.

64 Thereupon, afterwards, to wit, on the 24th day of January, 1884, separate answer of The Otoe County National Bank of Nebraska City, Neb., was filed in said case; which said answer is in words and figures following, to wit:

In the District Court of the United States within and for the District of Nebraska.

GEORGE H. HILTON, Complainant, *vs.* JAMES E. JONES, JOHN HILTON, THOMAS W. Lowrey, Thomas P. Smith, William C. Lincoln, James F. Hilton, Joseph B. Lincoln, Alice B. Ducharme, Augusta Hilton, Smith B. Galey, Jacob Rocke, The State National Bank of Lincoln, Nebraska; Otoe County National Bank of Nebraska City, Nebraska; John M. Young, and August F. J. Schmuttie, and Others, Respondents.	Answer of Otoe County National Bank of Nebraska City to Amended Bill.

Answer of The Otoe County National Bank *Bank* of Nebraska City, Nebraska, one of the above-named respondents, to the amended bill of complaint of George H. Hilton, complainant.

This respondent, now and at all times hereafter saving and reserving unto itself all benefit and advantage of all and all manner of objections and exceptions which can or may be taken or reserved to the many errors, uncertainties, and other imperfections and insufficiencies in the said complainant's said bill of complaint contained, for answer thereto, or unto so much or such parts thereof as this respondent is advised is or are material or necessary for it to make answer unto, this respondent, answering, says—

65 That it admits that on the 26th day of October, 1861, said complainant was the owner in fee of the said several tracts *of* of land described in said bill of complaint, and that on said day the said complainant made, executed, and delivered unto the said John Hilton the deed of *con*veyance of said lands and every of them in said bill of complaint set forth and described, and that said deeds were filed for record in the clerk's office of Lancaster county and described therein as in said bill averred, and that said John Hilton accepted said trust by endorsement on said deed as in said bill averred, and your respondent avers that the said John Hilton hath fully performed the said trust and exercised the powers in and by said deed created and granted in manner and form as therein directed and for the benefit of said *cestui que trusts* as by said deed

intended, in this, to wit, that on the 16th day of September, 1863, the said John Hilton, acting under and by virtue of the said deed of conveyance and pursuant to the powers therein contained and with the knowledge, consent, and express direction of the said George H. Hilton and of the said George L. Hilton, James F. Hilton, and Joseph B. Hilton, them all and each of them arrived at the years of discretion, and for the purpose of assuming, conserving, and protecting the interests of said *cestui que trust*. and for a valuable consideration paid and promised to be paid to them for their benefit by the said Alice B. Hilton, did convey all and every of said lands to the said Alice B. Hilton, now, by marriage, Alice B. Ducharme, in manner and form by deed bearing said last-named date, as in said bill of complaint averred, and that said deed was duly filed for record and recorded, as in said bill of complaint averred.

66 And this respondent avers that the said Alice B. Ducharme, born Alice B. Hilton, hath fully performed the trusts and exercised the powers by the said last above-mentioned deed of conveyance created and granted, to wit:

That on the 2nd day of November, 1865, the said Alice B. Ducharme, born Alice B. Hilton, acting under and by virtue of the said several deeds of conveyance and pursuant to the powers therein contained and of the advice, consent, and express direction of the said complainant and of the said *cestui que trust*., and for the purpose of further assuring, protecting, and conserving their interests in said trust and in said lands, and for a valuable consideration paid and promised to be paid by the said Augusta Hilton for the benefit of said George L. Hilton, James F. Hilton, and Joseph B. Hilton, did convey all and every of said lands to the said Augusta Hilton in manner and form, and by deed bearing said last-named date, as in said bill of complaint averred; which deed was filed for record and recorded, as in said bill averred.

And this respondent further avers that on the 26th day of October, 1861, and simultaneously with the execution of the deed of conveyance by said George H. Hilton to the said John Hilton, in the said bill of complaint described and set forth, the said George H. Hilton also, by his certain deed of conveyance bearing said last-named date, duly signed, witnessed, and acknowledged and delivered, for a valuable consideration duly granted, bargained, sold, and conveyed all and every of said lands mentioned in said bill of complaint upon the same trusts, as expressed in said deed, for the benefit of said George L. Hilton, James F. Hilton, and Joseph B. Hilton, as were contained in the said deed by the said George H. Hilton to the said John Hilton, and whibh said deed granted by express words the same powers to the said Augusta Hilton of and

67 concerning all and every of said lands, to grant, sell, and convey the same or any of the same at any time at her discretion, or in any way or manner at her discretion, for the benefit of said George L. Hilton, James F. Hilton, and Joseph B. Hilton, as were granted to said John Hilton by the said deed of conveyance in said bill of complaint first described.

And this respondent further represents unto your honors that said deed from the said George H. Hilton to the said Augusta Hilton after the same had been signed, executed, acknowledged, and delivered to the said Augusta, as aforesaid, became lost or destroyed and now and for many years hitherto the whereabouts and existence of the same is and has been wholly unknown, and that said deed has never been filed for record or recorded in any public office.

And this respondent further represents to your honors that after the making of each and all of the several conveyances hereinbefore referred to and the execution and delivery of all and every of the said several deeds of conveyances hereinbefore mentioned the said George H. Hilton, for the purpose of supplying the absence of said deed so executed and delivered by him to the said Augusta Hilton and which had become lost or destroyed as aforesaid, and for the purpose of in all things affirming and *pertending* all and singular the titles, estates, trusts, and powers theretofore created, granted, and *denied* by the said several conveyances hereinbefore mentioned in manner and form as hereinbefore set forth, and for the purpose of further assuming and confirming the legal title of all and every of said lands and the said estates and trusts therein in the said Augusta Hilton and her powers so as aforesaid created and granted to grant, bargain, — sell all and every of said lands at any
68 time or in any manner for the benefit of said James F. Hilton, Joseph B. Hilton, and George L. Hilton, at her discretion, *and* did by his deed of conveyance bearing date the 8th day of May, 1866, and on the said day made, signed, acknowledged, and delivered to the said Augusta Hilton, in terms grant, bargain, sell, and convey all and every of said lands to the said Augusta Hilton, expressly, however, upon the same trust, but as of fee, and with the same express powers to grant, bargain, sell, and convey the same or any of them at any time and in any way as were created, granted, and conferred as aforesaid by the said former deed of October 26th, 1861, by the said George H. Hilton to the said Augusta; said deed last executed as aforesaid was duly filed for record and recorded in the clerk's office of Lancaster county, Nebraska, on the — day of ——, 18—, and a copy thereof is hereto annexed, marked Exhibit "A," and made a part hereof.

And this respondent respectfully submits unto your honors, under the advice of counsel, that whatever estates, trusts, and powers were created, granted, aliened, or confer-ed by the said George H. Hilton by his said several deeds of conveyance executed and delivered on the 26th day of October, 1861, were thereby created, aliened, granted, and vested in and to the said John Hilton and Augusta Hilton jointly, and that by operation of law and of the said several mesne conveyances from the said John Hilton to the said Alice B. Ducharme, born Alice B. Hilton, and from the said Alice B. to the said Augusta Hilton, all and every of such title and estates, trusts and powers, became and were on and before the said 18th day of May, 1866, vested in said Augusta Hilton solely, and the said John Hilton and the said Alice B. Hilton, by marriage Alice B. Ducharme, each

and both of them, on and before said date became and were
69 wholly divested of all and every part thereof, and this respondent submits, under the advice of counsel, that all and every of the respondents herein and all persons claiming through or under them or either of them, and especially the said George H. Hilton, are and is, by reason of the foregoing facts and circumstances and of said several deeds and conveyances, and of right ought to be, forever estopped from claiming or ascerting that at the date last aforesaid the title to any of said lands or estates were or was in any other person than the said Augusta Hilton.

And this respondent further represents to your honors that the nature, *estate*, and purposes of the said trusts upon which said lands were conveyed by the said George H. Hilton to the said John Hilton and Augusta Hilton and which became solely vested in said Augusta Hilton as aforesaid were never declared nor expressed in writing except by the above-mentioned claims in said deed, but this respondent avers that at the time said trust estate was created the said *cestui que trust*., George L. Hilton, James F. Hilton, and Joseph B. Hilton, were infants, sons of the said George H. Hilton, and that said trust was at the time of its creation intended and orally declared by said George H. Hilton and accepted by the said John Hilton and Augusta Hilton for retaining, protecting, and *retaining* title to said lands and preserving the same from the creditors of the said George H. Hilton, who was then indebted to divers persons in large and sundry amounts, and was wholly destitute of other property, in a person of mature years and discretion, capable of dealing with, managing, controlling, granting, bargaining, selling, conveying, and encumbering the same or any portion of the same, at the discretion of said trustee or trustees, during the minority of said *cestui que trusts* for their support, maintain-
70 nance, and education of each and all of said minors, and to convey to each of said minors upon his *ob*taining the age *if* majority one-third in severalty or an undivided one-third of all and every of such land as should remain undisposed of at the date of such majority.

And this — further represents to your honors that on the 25th day of August, 1871, the said George L. Hilton had attained the years of his majority and had become entitled to a conveyance in fee simple absolute, according to the terms and conditions and true intent of said trust and the estate and powers of and concerning the same, and — said lands so vested in said Augusta Hilton as aforesaid to a conveyance of one undivided third part of all and every of said lands, and thereupon on the — day last aforesaid, pursuant to the terms and intent of said trust and by virtue of the powers so vested in her as aforesaid, the said Augusta Hilton did sell and convey to the said George L. Hilton one undivided one-third part of all of said lands by deed of bargain and sale in manner and form as in said bill alleged; to a copy of said deed annexed to said bill of complaint and marked Exhibit "D" this respondent begs leave respectfully to refer; and this respondent avers that said last-named deed and conveyance was so made as aforesaid by the advice, consent, and pro-

curement of the said complainant, George H. Hilton, for the purpose of vesting in the said George L. Hilton the title in fee simple absolute of said one undivided third of said lands, and that said deed did in terms and in fact so vest the same.

And this respondent further avers that on the 11th day of September, A. D. 1872, the said George L. Hilton, being of mature years and so seized in his own right in fee simple absolute of, in, and to one undivided third part of all and every of said lands, did,
71 by and with the full knowledge, advice, consent, and procurement of the said complainant, and for a valuable consideration to him in hand paid by one Smith B. Galey, respondent herein, by his good and sufficient deed of conveyance duly executed and delivered, convey to the said Galey said undivided one-third part of all and every of said lands, and this respondent avers that said conveyance was for a valuable and fully adequate consideration, and that said deed hath been duly filed for record and recorded in the office of the clerk of Lancaster county, Nebraska.

And this respondent further avers that on the 18th day of September, A. D. 1883, the said Smith B. Galey, being so seized in fee simple in his own right of said undivided one-third part of all and every of said lands as aforesaid, did, for a valuable consideration to him in hand paid by the said William C. Lincoln, and with the knowledge, advice, consent, and procurement of the said complainant, George H. Hilton, by his good and sufficient deed of conveyance, *did* grant, bargain, sell, and convey said undivided one-third of all and every of said lands in fee simple to the said William C. Lincoln, which deed was duly signed, witnessed, acknowledged, delivered, and filed for record in the office of the clerk, and — a copy thereof, annexed to said bill of complaint and marked "Exhibit R," this respondent begs leave respectfully to refer.

And this respondent further represents to your honors that on the 13th day of December, A. D. 1873, the said William C. Lincoln, being vested in fee simple absolute with the title to said undivided one-third of all and every of said lands as aforesaid, began — in the district court of the second judicial district of Nebraska in and for Lancaster county, in which action said Lincoln was plaintiff and the said George H. Hilton and others were defendants, of which action and all the parties thereto and of the subject-matter thereof said
72 court, being a court of record, *of* original and general jurisdiction and full and complete jurisdiction to hear and try and determine the same, and in which action the said Lincoln as such plaintiff filed his petition in conformity to the practice of said court, in which he alleged, among other things—the said Lincoln as such plaintiff averred that he was by reason of the said several conveyances hereinbefore set forth the owner in fee simple absolute of the undivided one-third part aforesaid of all and every of said lands, and in which he averred that the said George H. Hilton claimed or pretended to have some title, claim, lien, or interest in or to said undivided one-third of said lands or a part thereof, and prayed that the said George H. Hilton be required to exhibit such pretended claim, title, or interest, if any he had, and that the same be ad-

judged void, and that the said title of the said Lincoln be affirmed therein, and this respondent avers that thereupon the said George H. Hilton and the said George L. Hilton and others of said defendants during the pendency of said action personally appeared in said court and in writing expressly disclaimed any and all title, claim, lien, or interest of whatsoever name or nature in or to said lands or any of them; and this respondent further represents that after said cause came on to be heard in said court upon the pleadings and proofs therein, to wit, on the 21st day of January, 1874, that being one of the days of a regular term of said court, and that thereafter, on the day aforesaid, the said court did, upon being fully advised in the premises, upon consideration thereof duly find that all and singular the allegations of said petition *was* true, and upon due consideration did duly adjudge and decree, among other things, that the said William C. Lincoln was the owner in fee simple absolute
73 of said undivided third part of all and every of said lands; and this respondent submits to your honors, under the advice of counsel, that by reason of said several deeds of conveyance and of the said facts and circumstances hereinbefore set forth and narrated and of the said decree and the said disclaimer, findings, and proceedings in said action in said district court in and for Lancaster county, Nebraska, the said George H. Hilton and all and every person or persons claiming or to claim through or under him is and are and of right ought to be forever estopped to question or deny that at the date of the rendition of said decree said William C. Lincoln was the owner in fee simple absolute of the undivided one-third part in and to all and every of said lands, with full right, power, and authority to sell and convey the same; and your respondent avers that said decree at all times has been and now is in full force in said court, wholly unimpeached and unappealed from in said district court.

And this respondent further represents to your honors that on the 1st day of November, 1878, the said William C. Lincoln, being the absolute owner in fee simple of the undivided $\frac{1}{3}$ of all of said lands in complainant's title mentioned, did make, execute, and deliver to this respondent his certain mortgage deed of that date, duly signed, acknowledged by himself and his wife, Nora Lincoln, whereby they conveyed to this respondent, The Otoe County National Bank of Nebraska City, Nebraska, the undivided $\frac{1}{3}$ of the southwest fourth ($\frac{1}{4}$) of the northwest quarter ($\frac{1}{4}$) and the northwest fourth ($\frac{1}{4}$) of the southwest quarter ($\frac{1}{4}$) of section No. (14) fourteen, in township No. nine (9) north, of range No. six (6) east, of the sixth — meridian, in Lancaster county, Nebraska, which mortgage deed was duly filed and executed in the office of the clerk of
74 Lancaster county, Nebraska, on the 10th of Nov., 1883, on page 133 of Book "C" of the mortgage records of said county, reference to which record is hereby respectfully made; that such mortgage was given to secure the payment to this respondent of the sum of $500; that such mortgage was regiven by said Lincoln and wife to this respondent at the special instance and request of this complainant herein, and was so given in payment of $500 due to this re-

spondent from said George H. Hilton, complainant, for money at and before that time due to this respondent from him, and this respondent took such mortgage in part payment of its debt against said George H. Hilton at his special instance and request, and this respondent was persuaded and induced by said complainant to take such mortgage by his representations that said Lincoln was the owner in fee simple of said lands, with good right to sell, mortgage, and convey the same, and that said George H. Hilton receive said sum of $500, the consideration of such mortgage.

That afterwards and on or about the — day of ——, 1875, this respond-nt did duly foreclose such mortgages in the district court of Lancaster county, Nebraska, & at the April term of said court for 1875 this respondent obtained in said court a decree of foreclosure of said mortgage and an order for the sale of said land to pay the sum of $572.56, by said court found due to this respondent on said mortgage, and on the 14th day of June, 1875, one Paren England, by the appointment of said court special master for that purpose, did duly sell said land at public auction to this respondent for the sum of $300, after having duly and lawfully given notice of the time and place of such sale, and afterwards said sale was by said court duly examined and confirmed and such special master was ordered to deed and convey said land to this respondent,
75 and on the 30th day of July, 1875, said Paren England, as such special master, did, by virtue of the order of sale issued to him out of such court in said case and by the order of such court so made when such sale was confirmed, by his deed dated July 30, 1875, and duly signed, executed, and acknowledged and delivered to this respondent, convey to this respondent said lands so in said mortgage conveyed, which deed is duly recorded on pages 61 and 62 of Book "R" of Deed Records of said Lancaster county, a copy of which deed, marked "A," is hereto annexed, and this respondent then became and was the owner in fee simple of said land, and thereafter & since that date had and held said land in its possession under said deed and since paid the taxes levied thereon, and your respondent further says that by reason of the premises the said complainant is estopped from questioning this respondent's title to said ⅓ of said land and from claiming such land.

This respondent further says that it is true that on the 1st day of Feb'y, 1869, Augusta Hilton by mortgage deed conveyed the S. E. — of sec. 2, town. 9, range 6, in said county, to George H. Hilton, & to said George H. Hilton assigned, sold, & delivered such mortgage to this respondent.

That such mortgage was by him so assigned to this respondent for a good and valuable consideration, being for about $14.00 cash paid to him by this respondent, and this respondent denies that said Augusta Hilton, the mortgagor, or said George H. Hilton have ever paid said mortgage debt to this respondent. This respondent further says that said George H. Hilton has no right, title, or interest in or to said mortgaged premises.

And this respondent, further answering said amended bill, says

that the complainant ought not to have the relief prayed,
76 because his cause of action, if any he has, fully accrued more
than four years & more than ten years prior to his filing his bill in his cause; wherefore his cause of action is barred by the statutes of limitation of Nebraska.

That complainant ought not to have the relief prayed in his amended bill, because this respondent is now and has been for more than ten years in actual, open, notarious possession of said land, and that complainant cannot by filing his bill in equity in this court deprive this respondent of its right to have its case & title tried by a jury in a law court, and that said complainant's bill shows that if he has any cause of action he has a complete remedy at law.

This respondent further says that complainant ought not to have the relief prayed in his amended bill by having the decree of foreclosure of a mortgage given by Augusta Hilton to him, made and entered in the district court of Lancaster Co., Nebraska, which decree appears upon page 343 of Book "A" of the records of said district court, set aside and cancelled, because on Oct. 26, 1883, said complainant filed in this court his bill of complaint against this respondent, in which he prayed that said decree be canceled, and such case was heard by this court at the September term of 1885 and complainant's bill, by decree of this court duly made in February, 1886, dismissed at his cost, which decree is a bar to this action.

And this respondent denies all and every & all manner of confederation wherewith it is charged by said amended bill, without this, that there is any other matter, cause, or thing in said amended
bill contained material or necessary for this defendant to an-
77 swer unto and not herein and hereby well and sufficiently
answered, confessed, traversed, & avoided or denied is true, to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove as this honorable court shall direct, and p"ays to be hence dismissed with such decree as in equity it is entitled to & with its costs in this behalf wrongfully expended and witnessed.

M. L. HAYWARD,
Solicitor for Respondent The Otoe County National Bank.

Attached to said answer is Exhibit "A," in words and figures following, to wit:

Sheriff's or Master Commissioner's Deed.

Know all men by these presents that whereas the Otoe County National Bank of Nebraska City, Nebraska, did, by virtue of its judgment of the district court of the second judicial district of the State of Nebraska within and for the county of Lancaster, at the April term thereof, A. D. 1875, recover a judgment ag'st William C. Lincoln for the sum of five hundred seventy-five dollars fifty cents and costs of said suit, taxed at twelve dollars & 75 cents; and whereas it was then and there further ordered in said action that in default of the payment of the judgment aforesaid by the said William

C. Lincoln that Paren England, as special master commissioner, should cause the lands and tenements hereinafter described to be appraised, advertised, and sold according to law; and whereas the said William C. Lincoln having made default therein, the said special master commissioner, under and by virtue of the order of the same to him duly directed, did, on the fourteenth day of
78 June, A. D. 1875, at the front entrance to the Academy of Music, wherein said district court was last held, in the city of Lincoln, Lancaster county, in said county of Lancaster (having first giving due and legal notice of the time and place of said sale for not less than thirty days prior thereto in the "Evening Star," a newspaper printed & of general circulation in said county of Lancaster), sell the premises at public auction to the Otoe County National Bank of Nebraska City, Nebraska, for the sum of three hundred ($300) dollars, which sale was afterwards, at the adjourned April term of said court, A. D. 1875, examined & confirmed, and the said Paren England, as such special master commissioner, was ordered to convey the said premises in fee simple to the said Otoe County National Bank of Nebraska City, Nebraska: Now, therefore, I, the said special master commissioner as aforesaid, in consideration of the premises and by virtue of the powers vested in me by law, do hereby give, grant, and convey to the said Otoe County National bank, his heirs and assigns, the premises so as aforesaid sold, to wit, the undivided one-third (⅓) of all the following-described land, to wit, the southwest quarter (¼) of the northwest quarter (¼) (S.W. ¼ of N.W. ¼) and the northwest quarter (¼) of the southwest quarter (¼) (N.W. ¼ of S.W. ¼) of section fourteen (14), in township nine (9), of range six (6) east, 6th P. M., all in said county of Lancaster, with the appurtenances; to have and to hold the same to the said Otoe County National Bank of Nebraska City, Nebraska, its heirs and assigns, and its & their use and behoof forever.

In testimony whereof I have, as such special master commissioner, hereunto set my hand and affixed my seal this 30th day of July, A. D. 1875.

PAREN ENGLAND, [SEAL.]
Special Master Com.

79 Executed and delivered in presence of—
L. W. BILLINGSLEY.

STATE OF NEBRASKA, } ss:
County of Lancaster, }

Personally appeared before me, the undersigned, a notary public, commissioned, qualified for, and residing in said county of Lancaster, Paren England, special master commissioner, personally known to me to be the identical person who signed the foregoing deed, and he acknowledged the signing and execution of the said deed — his voluntary act and deed for the purposes therein set forth.

Given under my hand and seal this thirtieth (30) day of July, A. D. 1875.

L. W. BILLINGSLEY,
Notary Public.

[NOTARIAL SEAL.]
7—47

On the back is endorsed: "Special masters commissioner's deed. Paren England, special master commissioner, to the Otoe County National Bank of Nebraska City, Nebraska. Dated ——. State of Nebraska, Lancaster county, *ss:* Filed for record July 30th, 1875, at 10 o'clock 50 minutes a. m., and recorded in the office of the clerk of said county, in Book R of Deeds, on page- 61, 62. Wm. A. Sharrar, county clerk, by I. P. Hebard, deputy."

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117 H. U. S. circuit court, dist. of Nebraska. George H. Hilton *vs.* James E. Jones *et al.* Separate answer of the Otoe County National Bank of Nebraska City, Neb. Filed Jan. 24, 1884. Elmer D. Frank, clerk. N. L. Hayward, solicitor for respondent, The Otoe County National Bank.

80 Thereupon, afterwards, to wit, on the said 28th day of January, 1884, answer of Augusta Hilton was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

GEORGE H. HILTON, Complainant, *vs.* JAMES E. JONES, JOHN HILTON, THOMAS W. Lowrey, Thomas P. Smith, William C. Lincoln, James F. Hilton, Joseph B. Hilton, Nora M. Lincoln, Alice B. Ducharme, Augusta Hilton, Smith B. Galey, Jacob Rocke, The State National Bank of Lincoln, The Otoe County National Bank of Nebraska City, August F. J. Schmutte, & Others, Defendants.	Answer of Augusta Hilton.

Answer of Augusta Hilton, one of the defendants, to the bill of complaint of George H. Hilton, complainant in the above cause.

This defendant, now and at all times hereafter saving and reserving unto herself all benefit and advantage of exception which can be had or taken to the many errors, uncertainties, and other imperfections in the complainant's said bill contained, for answer thereto or unto so much thereof as this defendant is advised is or are material or necessary for her to make answer unto, this defendant, answering, says:

2. That she admits, as stated in the bill in this case, that on the 16th day of September, A. D. 1863, her uncle, John Hilton, conveyed to her sister, Alice B. Ducharme, by quitclaim deed of
81 that date, as trustee for her three brothers, George L. Hilton, James F. Hilton, and Joseph B. Hilton, who were then minors, all the lands in said deed described, being upwards of two thousand acres, situated, as your respondent understood, on and in the vicinity of Salt creek, in Lancaster county, Nebraska.

3. And this respondent, further answering, says that she was informed by her said sister, shortly after the making of the above deed which her sister had then received from her said uncle and which respondent read, that her sister had paid nothing for said lands; that they were made over to her by said deed, to be held by her in trust for the benefit of her three brothers, the same as her uncle held them, and this respondent, so believing, charges the same to be true.

And this respondent, further answering, says that on the 22nd day of November, 1865, the said Alice B. Hilton, for the consideration of one dollar and natural love and affection, conveyed to this respondent all the lands conveyed in the said deed from John Hilton, trustee, to said Alice B. Hilton, except the northeast quarter of section 6, township eight N., of range 7 east: also except the N. ½ of N. W. ¼ and N. W. ¼ of N. E. ¼ of section 21, township 10 N., of range 6 E., the location of which latter tract had been canceled by the General Government as saline lands, as will appear by reference to said deed so made to her as not included therein.

5. This respondent, answering, admits that she had actual knowledge of the trust deed of 26th October, 1861, made by her father, George H. Hilton, to her said uncle, John Hilton, in trust for benefit of her said three brothers, together with the contents of said deed, at the time of the said conveyance to her, and she also admits
82 that she had knowledge of the said deed of 16th September, 1863, from John Hilton, trustee as aforesaid, to said Alice B. Hilton and of its contents, and respondent admits that about that time and subsequently, when the said deed of 22nd of November, 1865, was made to her, it was distinctly understood between the parties thereto that the said Alice B. Hilton paid nothing in money or anything but family affection in consideration for said lands so assumed to be conveyed by her said uncle; that the same was a gift to her in trust or merely made over by him to her to be held by her in trust for her said three brothers on the same terms and conditions that her said uncle so held them, and that it was so understood between her and her said uncle. This was distinctly understood by all of us in the family and no concealment made about it and so proclaimed to all persons whom it might concern then and since; and this respondent further admits that the deed made to her of 22d November, 1865, was distinctly understood between this respondent and her sister, Alice B. Hilton; that as she was then soon to be married to Mr. Alfred J. Ducharme, of Detroit, that she would so deed in like manner and make over the lands in that deed described to this respondent, to be held by her in trust for her said three brothers, who were then minors, in the same manner that her said sister and uncle held them; that no money was paid by her for said lands; that the consideration expressed in said deed was one dollar and natural love and affection, and it was not and could not be considered by any one a purchase of the lands.

6. And this respondent, further answering, says that at the time said lands were made over to her by said sister Alice, in 1865, the

country in which said lands were situated was wild and
83 mostly in a state of nature and the government in a territorial condition, as she is informed and believes, and that no courts or offices of record were then established or held in the county in which the lands were situated; and respondent further says that but little consideration was given at the time by the parties to the forms of the deeds or by any of the family, but merely to have the lands made over to a proper member of the family, to be held in trust for her said three brothers, and your respondent then being within a few days of nineteen years of age, the same were so deeded to her by a quitclaim deed, as respondent is informed and believes.

And this respondent, further answering, says that on the 25th day of August, A. D. 1871, she conveyed by deed of that date to her brother, George L. Hilton, one of the *cestui que trusts*, who was then over 21 years of age, an undivided two-thirds of the lands in said deed described, which deed is recorded in the record of deeds of said Lancaster county, in Book I, *of* page 560, in trust for her two brothers, James F. Hilton and Joseph B. Hilton, according to the terms of and in fact using the identical words of the original trust from respondent's father, George H. Hilton, to her said uncle, John Hilton, thereby —, as your respondent understood it at the time and so intended it to express distinctly the trust aforesaid and the title and conditions by which she and also her brother, George L. Hilton, should hold said land, and it was so understood by him, and so should be by all others person- whom it might concern, as trust property passing from her said uncle down to her said brother, George L. Hilton, through her said sister, Alice B. Hilton, and this respondent, as hereinbefore stated.

8. And this respondent says that the reference above
84 made to that deed recorded in Book I, page 560, is made in this connection to show that a plain declaration of the trust as was supposed to be vested in her at the time of the making of that deed to the said George L. Hilton was placed upon record in the county where the lands are situated, and that she held the whole of said lands conveyed to her by her sister, Alice B. Hilton, in trust for her three brothers according to the original trust made to John Hilton, and that subsequent purchasers, if any there should be, should have notice accordingly; and respondent submits to the court, under advice of counsel, that this declaration of the trust by which respondent suppose- she held said lands being there made and duly recorded, thus became notice to all subsequent purchasers, and also that this respondent sought in that way to divest herself of her said supposed trust, whether legally or illegally it is for this honorable court to determine, and she humbly asks that in any event she may be held acquit- of any deceit or bad faith in the premises.

9. And this respondent, further answering, says that she admits that on the 25th day of August, A. D. 1871, she assumed to and intended to convey—as she thought, legally—to her brother George L. Hilton, who was then over twenty-one years of age, he being one of

the three *cestui que trusts* mentioned in the original trust deed made by respondent's father, George H. Hilton, to her said uncle, John Hilton, under the impression, but without any legal advice in the matter, that the said George L. Hilton, and also the other beneficiaries under said original trust, was entitled to have conveyed to each of them their equal undivided one-third of said lands on their respectively arriving at the age of twenty-one years, and
85 holding this opinion of her duties and the requirements of the original trust deed, he having arrived at that age, she made the deed aforesaid to him for an undivided one-third of the lands in that deed described, a copy of which is attached as Exhibit D to the bill in this case.

This respondent, further answering, says that she admits that the consideration expressed in said deed to her said brother, George L. Hilton, was one dollar and natural love and affection; that no money was paid for the same, and that it was a voluntary gift to him of what she thought at the time he was entitled to receive under the original trust deed made by his father aforesaid.

10. And this respondent further says that said deed to her brother was made without any consultation with any one upon the subject; that it was merely taken for granted that upon his arriving at legal age he was entitled in fee to his portion of said lands under the original trust deed aforesaid, and hence that deed was made; it certainly was no sale of the lands, and the consideration expressed in the deed did not indicate anything of the kind, but merely a voluntary gift as it was.

11. And this respondent, further answering, saith that she knows nothing about the questions and allegations mentioned in the bill in this case as to whether it was only a life estate vested in the beneficiaries under the original trust deed to John Hilton, or whether the same was a fee simple vested in them, neither does she know whether the trust to John Hilton was a personal trust to him and to continue during the respective lives of the beneficiaries, George L. Hilton, James F. Hilton, & Joseph B. Hilton, nor does she
86 know whether the said John Hilton could divest himself of the trust aforesaid, as he assumed to do by the deed he made, or in any other way than by his removal by or his resignation to a court of competent jurisdiction in the presence, nor does she know whether her said uncle, John Hilton, the original trustee, ever applied to any court for either or any of said objects or applied to any court for power or authority to sell or convey said land or to transfer said trust or to delegate his authority under said trust to any other person or persons, or any or all of these questions. Your respondent is totally uninformed, and she can only appeal to the various deeds upon record for any response upon these questions, as she knows nothing outside of them upon said subject, and those deeds, as she is informed and believes, are fully presented to the court in this case.

12. This respondent, however, will further say and make answer in this connection that she never consulted with or sought any legal advice of any person upon any of the special points of law or

of facts suggested or raised in the bill in this case and stated above in the foregoing clause of this her answer, such questions never having been mooted by any one to her knowledge or in her presence by any person whatever; but the course persued by her was taken for granted as correct and no objection was raised by any one, and if your respondent has made any mistakes or done any wrong in accepting the trust of this property as aforesaid or in making the conveyances aforesaid to her brother George L. Hilton individually or in trust aforesaid they were done through ignorance of the law and not with any intention to deceive or mislead any one,

87 and done without proper deliberation or advice in the premises: and as all her deeds and those of her predecessors were legally placed upon record where the law requires, and this notice for the fullest investigation and enquiry upon all the points involved in this case as to the title to the land in controversy, she prays the court that she may be held acquit- of wrong or injury to any one, as she received not one cent of money from any of the parties in this case for any of the lands in controversy.

13. And this respondent, further answering, says that she knows nothing of her own knowledge of the circumstances of the making of the deed from her brother George L. Hilton to Smith B. Galey, mentioned in the bill, but she is informed and believes, from information obtained from her brother and others, and, so believing, charges the same to be true, that said Galey paid her brother but three or four hundred dollars in cash for all the lands assumed to be sold by him individually and as trustee to said Galey; that the consideration mentioned in the deed, except that amount, only represented unsecured promissory notes of said Galey, payable at long periods of time, and that the whole transaction was a fraud perpetrated upon her brother, and that by some arrangements afterwards between the parties it was agreed that the lands should be conveyed to Wm. C. Lincoln, and thus the same was done, and her brother frequently stated to respondent before his death that he had never received any money but the said $400 from either Galey or Lincoln for all the lands aforesaid mentioned in both deeds. Neither does this respondent know of her own knowledge anything of the circumstances of the making of the deed from Wm. C. Lincoln to James E. Jones, Thomas W. Lowrey, Thomas P. Smith, or to other parties in the bill mentioned, and that she is totally ignorant of the same or how or why they were made.

88 14. And this respondent, further answering, says that she admits, as charged in the bill in this case, that her brother George L. Hilton died at Albany, Missouri, on the 16th day of September, 1877, intestate, without being married or leaving issue, but who is entitled to his real estate, if any, situated in the State of Nebraska this respondent is not informed and asks the court to determine the same upon the final hearing of this case.

15. And this respondent denies all and all manner of unlawful combination and confederacy wherewith she is by the bill charged; without this, that there is any other matter, cause, or thing in the said complainant's bill contained material or necessary for this de-

fendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with her costs and charges in this behalf wrongfully sustained.

H. H. BLODGET &
AUGUSTA HILTON, *Pro Se,*
Sol's for Respondents.

UNITED STATES OF AMERICA,
The State of New York, County of New York.

I, Augusta Hilton, being duly sworn, depose and say that all the several matters and things which are set forth in the answer
89 as from the information of others I believe to be true, and that all the several other matters and things therein set forth are true in substance and in fact. AUGUSTA HILTON.

Sworn to and subscribed before me, the undersigned, this 3rd day of January, A. D. 1884.

[SEAL.] DANIEL G. ROLLINS,
Surrogate of New York County, New York.

Upon the back of said answer appear endorsements in words and figures following, to wit:

No. 117, H. Circuit court U. S. Geo. H. Hilton *vs.* Jas. E. Jones, John Hilton, *et al.* Answer of Augusta Hilton. Filed Jan. 28, 1884. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 30th day of January, 1884, answer of Alice B. Ducharme was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

GEORGE H. HILTON, Complainant,
vs.
JAMES E. JONES, JOHN HILTON, THOMAS W. LOWREY, THOMAS P. Smith, William C. Lincoln, James F. Hilton, Joseph B. Hilton, Nora M. Lincoln, Alice B. Ducharme, Augusta Hilton, Smith B. Galey, Jacob Rocke, The State National Bank of Lincoln, The Otoe County National Bank of Nebraska City, August F. J. Schmutte, and Others, Defendants.

Answer of Alice B. Ducharme.

Answer of Alice B. Ducharme, one of the defendants, to the bill of complaint of George H. Hilton, complainant, in the above cause.

1. This defendant, now and at all times hereafter saving
90 and reserving unto herself all benefit and advantage of ex-

ception which can be had or taken to the many errors, uncertainties, and other imperfections in the complainant's said bill contained, for answer thereto or unto so much thereof as this defendant is advised is or are material or necessary for her to make answer unto, this defendant, answering, says:

2. That she admits, as stated in the bill in this case, that on the 16th day of September, A. D. 1863, her uncle, John Hilton, conveyed to her by quitclaim deed of that date, as trustee for her three brothers, George L. Hilton, James F. Hilton, and Joseph B. Hilton, her said brothers being then minors, all the lands in said deed described, being upwards of three thousand acres, situated, as she understood, on and in the vicinity of Salt creek, in Lancaster county, Nebraska. She don't recollect what the consideration mentioned in said deed —, whether one dollar or one thousand dollars; it was a mere nominal sum. She paid nothing for the lands. The lands were known as the Nebraska lands in the family of her father. She further says that she never sold any of said lands to any one; that deed was delivered to her by her said uncle, being sent to her by mail, and the same was afterwards put on record, according to her recollection, in said Lancaster county.

3. This respondent understood from her said uncle at the time it was so delivered to her that by that deed she held the said lands in trust for her said three brothers in the same way and on the same terms as her said uncle, John Hilton, held them, and she so understood it herself and always so stated to all other persons who made inquiry on the subject.

4. And this respondent, further answering, says that she made over the said lands (except the portions mentioned in the
91 bill) in A. D. 1865, in November, just before her marriage to Mr. Ducharme, to her sister, Augusta Hilton, who was then nearly nineteen (19) years of age; that she delivered the deed to her referred to in said bill. The consideration in that deed was, as she believes, one dollar and natural love and affection, but no money was paid. It was a gift, and intended in trust for her said three brothers and so understood between the parties thereto and the family and any others who made inquiry, and on the same terms and conditions that her uncle, John Hilton, and she herself was supposed to have held them.

5. And your respondent, further answering, says that the latter trusts to herself and her sister Augusta were in substance as above stated, declared by this respondent, in writing, in a deposition of hers and signed by her, taken in the city of Detroit, Michigan, where she *then* and still resides, on or about the 12th day of April, 1871, as this respondent remembers, which was to be read as evidence in a case wherein John T. Lewis was plaintiff and her father, George H. Hilton, and the said John Hilton and the other members of the family mentioned in said bill, including herself, were defendants, then pending in the district court of the 2nd judicial district of Nebraska in and for Lancaster county.

6. And this respondent is informed and believes, and so believing states the same to be true, that said deposition was, on the 15th day

of April, 1871, duly filed in said court and afterwards read on the trial of said cause and, as she is informed and believes, so continued on file in said cause up to a very recent date since the commencement of this suit; that suit, as respondent understood at the
92 time, in same way involved the title to the lands now in controversy and was widely known & spoken of in that vicinity.

7. And this respondent, further answering, admits that she had actual knowledge at the times hereinbefore related of the trust deed of 26th October, 1861, made by her father, George H. Hilton, to John Hilton in trust for the benefit of her said three brothers and of its contents.

8. And this respondent, further answering, says that, not being versed in the law nor having taken at any times or since any advice of any one on the particular questions raised in the bill in this case as to the validity of the deeds and of the intended trust aforesaid to herself and afterwards from herself to her sister Augusta, as hereinbefore stated, *says that* it was taken — granted as a matter of course between all the parties to the said transaction at the times that it could be legally so done; and, as it was then but a family matter between members of the family and they then not knowing or fully realizing that any large portion of said lands would ever or at least for a long period of time be required to be sold, as they were originally particularly intended by her father when her said brother became at a proper age that they should use and occupy them or take possession of them, the questions now involved were not thought of or considered or even mooted by any one, so far as this respondent knows or believes, and thus it was done, as now appears, incautiously, without due and proper consideration in the premises.

Further, the whole country in which the lands *was* situated was at that time wild and very much in a state of nature, with no facilities as now of courts or offices of record, and when sales
93 or conveyances should be required as contemplated by the original deed of trust the purchaser would see that the proper deeds were recorded, and that the title intended to be conveyed by said deeds was good and lawful, and thus, the title being spread upon record, it could be open to the fullest investigation before any money should be paid.

9. And this respondent, further answer-, says that she does not know now whether her said uncle could have conveyed the lands in controversy to her in trust as in the bill stated or not, and she appears to the court to protect her, as the law in such case may require, from any mistakes through ignorance of law she may have made in the transactions stated in this answer; as she is informed and believes, the deed made to her by her said uncle was but a quit-claim, and she made but a similar deed to her sister Augusta when she made over the lands to her in trust for her three brothers, who *was* then minors.

10. And this respondent, for further answer, says, as to other matters in reference to her in said bill, that she does not of her own knowledge know whether her said uncle, John Hilton, was re-

moved by or resigned to any court as the trustee of her said three three brothers, now does she know whether he obtained an order from any proper court to perform the acts he did in the conveyance of the lands in controversy to her, but she is informed and believes that he never did either, and she, under advice of counsel, deem- it proper to ask the court to declare if either were necessary in order to divest himself of the trust or to delegate the same to this respondent, or to so make over the lands in trust, as he supposed he did, to this respondent.

94 11. And this respondent, further answering, says that the only deed or conveyance of any kind she ever made to any one for the said lands or any part thereof was the quitclaim she made to her sister, Augusta Hilton, for the consideration of one dollar and natural love and affection, although no money was paid, and the lands were so made over to her in trust, as hereinbefore stated, as was then supposed and so understood between them, and thus intending to carry out the original trust made to her uncle, John Hilton, and as was expressed in her deposition aforesaid referred to, and so made known to all parties and to every one upon inquiry then and since.

12. And this defendant, further answering, says that in the conveyance so made to said Augusta and the delegation of the trust as aforesaid to her neither of the parties to said transaction deemed it necessary to ask the interposition of a court of equity or of any court for authority to properly and legally make the conveyance and delegation of the trust aforesaid, and therefore none was sought.

And if in this regard your respondent acted incautiously, without proper advice, and made a mistake, it was done without any intention to deceive or mislead any one, and was done in total ignorance of the requirements of the law in such case provided, and asks the court and submits, under the advice of counsel, that she should be protected from the error and mistake, if any, as the deeds aforesaid referred to in this answer and also in the bill were required by law to be placed upon record as notice, and were duly and lawfully so placed upon record in the the county where the lands are situated.

95 13. And, further, a plain and unequivocal declaration of the trust attached to said deeds was made in writing and signed by your respondent in her deposition hereinbefore particularly referred to and filed and read in the district court of the 2nd judicial district of Lancaster county, Nebraska, as far back as April, 1871, in a case wherein the title to the lands covered by said deeds was in controversy, and all of which thus became notice to subsequent purchasers of the nature and legality of the title in question.

14. Therefore your respondent says that she did all that the law or any one could reasonably demand of her in the premises, and in law and conscience is fully acquit of wrong or of any intention to mislead any one, and humbly asks in this her answer to the questions raised and the obligations made in the bill this honorable court so to declare.

15. And this respondent, further answering, says that she knows

nothing of her own knowledge of the deed assumed to be made by her sister Augusta to her brother, George L. Hilton, nor of the deed purporting to be made by the said George L. Hilton to one Smith B. Galey, mentioned in the bill, but she is informed and believes from information obtained from her said brother and others, and so believing charges the same to be true, that said Galey paid her brother but three or four hundred dollars in cash for all the lands assumed to be sold by him individually and as trustee to said Galey; that the consideration mentioned in the deeds, except about that amount only, represented unsecured promissory notes of said Galey, payable at long periods of time, and that said Galey held said notes in his own possession, giving her brother merely receipts that he so
96 held them; and respondent states that the whole transaction was a fraud perpetrated on her brother.

16. And respondent further states, upon information derived after the transactions aforesaid from her said brother and others, that by some arrangements afterwards between the parties to the deeds it was agreed that the lands should be conveyed to William C. Lincoln, and thus the same was done.

17. And this respondent, further answering, says that she knows nothing of her own knowledge of the circumstances of the making of the deeds from William C. Lincoln to James E. Jones, Thomas W. Lowery, Thomas P. Smith, or to the other parties in the bill mentioned, and that she is totally ignorant of the same or how or why they were made except so far as she learns from the bill in this case; but this respondent will say in this connection that on or about the — day of ——, A. D. 1873, she, at the urgent instance and request of the said William C. Lincoln, advanced to the said Lincoln the sum of one thousand dollars in cash in order to pay the taxes then due on said lands, or about to become due, in order to save and preserve the said lands to her said brothers from sale for taxes and for t-e improvements and preservation of the same in any event; and this respondent is informed and believes, and so believing charges the same to be true, that the said Lincoln never appropriated said money to the payment of the taxes or to improve or preserve said lands, but, on the contrary, the said lands afterwards and without authority were pretended to be sold by said Lincoln and the money derived from the sales squandered by him, and her brothers aforesaid derived little or n-thing from the proceeds of the pretended sales.

97 18. And this respondent, further answering, says in this connection that she is informed and believes, and so believing charges the same to be true, that after the payment of the one thousand dollars aforesaid to the said Lincoln the said Lincoln filed a petition in the district court of Lancaster county, Nebraska, for authority to sell the undivided two-thirds of said lands which he assumed to hold in trust for her brothers, James F. and Joseph B. Hilton, and that the principal grounds upon which he therein asked the court for an order for the sale of said lands were that taxes were due and also soon to become due on said lands requiring payment;

also for the support and education of her said brothers, then minors.

19. The foregoing clause of this answer answers as to the truthfulness of the tax part of said petition; and as to their support and education respondent says that her said brothers were at that time old enough to be self-supporting (in a growing city like Lincoln if thrown on their own resources, as they were then and since compelled to, having no money; and as to their education this respondent says that they were both, as also her brother George L. Hilton, thoroughly educated in the best schools and colleges of Cincinnati and Dayton, Ohio, in all the branches of a sound English education, fitting each of them for any business or commercial pursuit of life), long before Mr. William C. Lincoln was known in the family, by her respected father, who had ample means to do so, and that these charges could only have been trumped up as pretexes by said Lincoln and his astute lawyers, including said S. B. Galey, to get an order for the sale of said lands and to squander the proceeds upon themselves, as respondent is informed and believe- was afterwards done, her brother getting nothing.

I limit this statement to allowing brothers, one brother who was only 14 at the time of the sale of this property.— A. B. D.

98

20. And this respondent denies all and all manner of unlawful combination and confederacy wherewith she is by the bill charged; without this, that there is any other matter, cause, or thing in the said complainant's bill contained material or necessary for this defendant to make answer into and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with her costs and charges in this behalf wrongfully sustained.

H. H. BLODGETT,
Solicitor for Respondent.

Consulate general of the United States of America at Paris, France.

I, Alice B. Ducharme, being duly sworn, depose and say that all the several matters and things which are set forth in the foregoing answer as from the information of others I believe to be true, and that the several other matters and things therein set forth are true in substance and in fact.

ALICE B. DUCHARME.

Subscribed and sworn to before me this tenth day of December, 1884.

GEORGE M. WALKER,
U. S. Consulate General at Paris, France.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117 H. Circuit court U. S.

99 George H. Hilton *vs.* James E. Jones and John Hilton *et al.* Answer of Alice B. Ducharme. Filed Jan. 30, 1884. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 4th day of February, 1884, answer of John Hilton was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska. To January Term, 1884.

GEORGE H. HILTON, Complainant,
vs.
JAMES E. JONES and JOHN HILTON *et al.*, Defendants.

The answer of John Hilton, one of the defendants in the aforesaid bill of complaint, for answer says:

1st. That he admits that his brother, George H. Hilton, complainant in this case, was the owner in fee simple on the 26th day of October, A. D. 1861, of the lands described in the bill filed herein, situated in the county of Lancaster, then Clay and Lancaster county, in the Territory of Nebraska; that most of said lands had been previously located for him by this respondent prior to that date, and this respondent also located several tracts in the same locality, intending to remove thereon and make Nebraska his future home. This respondent, further answering, says that in October, 1861, he was residing in Madison county, Iowa, where he still resides.

Further answering, this respondent admits that on the said 26th day of October, 1861, the complainant herein made and executed and delivered to him a deed of trust, as in his said bill is fully
100 described and set forth, for the benefit of his three minor boys, viz., George L. Hilton, James F. Hilton, and Joseph B. Hilton, in equal portions. Said deed of trust gave this respondent a limited power at his discretion to sell and convey all or any portion of said lands for the benefit of said minors as described in said deed.

And this respondent also admits that on the 20th day of November, A. D. 1861, he accepted said trust so imposed on him and indorsed his acceptance in writing on said deed of trust, as stated in said bill, and was afterwards recorded in the record of deeds in said Lancaster county.

And, further answering, this respondent admits that said lands at that time and for a long time thereafter were wild and uncultivated, in a state of nature, of little value, and unsaleable, as was generally the whole Territory of Nebraska at that period.

This respondent further says that at no time did he ever sell said lands or any part thereof, and that he never had any offers for them.

This respondent admits he held said lands in said bill described until on or about the year of A. D. 1863, in the month of September, at which time the complainant and his wife were on a visit at

his house in Iowa, where he then resided; that when he accepted the trust reposed in him in said deed of trust he had intended to remove into Nebraska on lands he had purchased for himself at the time he had selected the lands for his said brother, George H. Hilton.

But this respondent's wife and family refused to remove from his home in Iowa to Nebraska; that the complainant's wife learning of this respondent's *abandonment* of removing to Nebraska
101 and this respondent's inability to look after and care *of* the lands in said trust deed, she urgently solicited that this respondent should convey said trust lands to her daughter, Alice B. Hilton, who was then of lawful age, where they would be carefully watched by a member of the family and the interests of the minors would be cared for better than in the hands of strangers or that could be done by this respondent. Upon the urgent and often repeated arguments of Mrs. Hilton this respondent, without considering what powers he had by said deed of trust and without legal counsel or advice, made a deed on the 16th day of September, A. D. 1863, to Alice B. Hilton of all the lands deeded to him in trust as described in said bill of complaint. A consideration of one thousand dollars was named in said deed, although no sum whatever was paid or claimed by this respondent.

The only purpose and object being the transfer of said trust to said Alice B. Hilton; and, further answering, this respondent says said deed to Alice B. Hilton was drawn up by some one in Madison county, Iowa, who- he now does not remember, and can give no reason or explanation further for anything contained therein than already he has hereinbefore stated in this his answer.

This respondent, further answering, says that in the month of April, 1873, in Winterset, Iowa, he gave his deposition at the instance of Otoe County National Bank of Nebraska City on behalf of the defendants in a certain suit or proceeding brought in the district court of Lancaster county, Nebraska, entitled George L. Hilton, James F. Hilton, and Joseph B. Hilton, by their next friend, W. W. Ducharme, *vs.* The Otoe County National Bank of Nebraska
102 City *et al.*, wherein this respondent stated all the facts and circumstances of his making said deed to Alice B. Hilton, and to which he now makes reference as a part of his answer, which said suit this respondent is informed was a controversy about some of the lands involved in this case.

This respondent, further answering, says that as to whether by said deed to Alice B. Hilton he did or did not divest himself of the duties imposed on him by the said deed of trust to him by George H. Hilton he is unable to say, and he therefore submits the determination thereof to this honorable court and adding thereto that, should it be judicially determined that he had not so divested himself, he now avows his willingness to discharge the duties devolving thereby upon him.

And this respondent, further answering, says that he knows of himself nothing of the deeds made by Alice B. Hilton to Augusta

Hilton and Augusta Hilton to George L. Hilton and the other deeds mentioned in said bill of complaint.

And this defendant denies all and all manner of unlawful combination and confederacy in said bill charged; without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

JOHN HILTON.

103 STATE OF IOWA, } ss:
Madison County, }

On this 31st day of January, A. D. 1884, before me, clerk of district court of Madison county, Iowa, personally appeared John Hilton and made oath that he had read the above and foregoing answer subscribed by him in my presence, and that he knew the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on information and belief, and as to those matters he believes them to be true.

W. S. WHEDON, *C'k D. C.*,
[SEAL.] B. C. G. WILLIAMS, *Deputy.*

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117 H. George H. Hilton *vs.* John Hilton *et al.* Answer of John Hilton. Filed Feb. 4, 1884. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 21st day of February, replication to answer of Otoe Nat'l bank was filed in said cause; which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

GEORGE H. HILTON
vs. } 117 H.
JAMES E. JONES, OTOE COUNTY NATIONAL BANK, *et al* }

The replication of George H. Hilton, plaintiff, to the answer of The Otoe County National Bank of Nebraska City, defendant.

104 This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that *they* will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant- is uncertain, untrue, and in-

sufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by his said bill of complaint he has already prayed.

J. C. CROOKER,
Solicitor for Plaintiff and
G. H. HILTON, *Pro Se.*

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 117, H. U. S. circuit court, district of Nebraska. In equity. Geo. H. Hilton *vs.* J. E. Jones, Otoe County Cat. Bank *et al.* Replication to answer of Otoe County Nat. Ban*l.* Filed Feb. 21, 1884. Elmer D. Frank, clerk. J. C. Crooker, solicitor for plaintiff.

Thereupon, afterwards, to wit, on the 19th day of March, 1884, replication to answer of Augusta Hilton was filed in said case; which said replication is in words and figures following, to wit:

105 In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

GEORGE H. HILTON
vs.
JAMES E. JONES, JOHN HILTON, AUGUSTA HILTON, *et als.* } No. 117, H.

The Replication of George H. Hilton, Plaintiff, to the Answer of Augusta Hilton, Defendant.

This repliant, saving and reserving unto himself now and at all times *g*ereafter all and all manner of benefit and advantage of exception which may be had or taken to the ma-ifold insufficiencies of the said answer, for replication thereunto say that *they* will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by his said bill of complaint he has already prayed,

J. C. CROOKER,
Solicitor for Plaintiff.

Upon the back of said replication appear endorsements in
106 words and figures following, to wit: No. 117, doc. H. U. S. circuit court, district of Nebraska. In equity. Geo. H. Hilton *vs.* J. E. Jones, Jno. Hilton, Augusta Hilton, *et al.* Replication to answer of Augusta Hilton. Filed Mar. 19, 1884. Elmer D. Frank, clerk. J. C. Crooker, solicitor for plaintiff.

Thereupon, afterwards, to wit, on the said 19th day of March, replications were filed in said case; which said replications are in words and figures following, to wit:

Replication to Answer of A. B. Ducharme.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

GEORGE H. HILTON
vs.
JAMES E. JONES, JOHN HILTON, ALICE B. DUCHARME, *et als.* } 117, H.

The replication of George H. Hilton, plaintiff, to the answer of Alice B. Ducharme, defendant.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that *they* will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is untrue, uncertain, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this re-
107 pliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by his said bill of complaint he has already prayed.

J. C. CROOKER,
Solicitor for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 117, H. U. S. circuit court, district of Nebraska. In equity. Geo. H. Hilton *vs.* J. E. Jones, Jno. Hilton, A. B. Ducharme, *et al.* Replication to answer of A. B. Ducharme. Filed Mar. 19, 1884. Elmer D. Frank, clerk. J. C. Crooker, solicitor for plaintiff.

Replication to Answer of Jno. Hilton.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

GEORGE H. HILTON
vs.
JAMES E. JONES, JOHN HILTON, *et al.* } 117, H.

The replication of George H. Hilton, plaintiff, to the answer of John Hilton, defendant.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that *they* will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and
108 hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

J. C. CROOKER,
Solicitor for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 117, doc. H. U. S. circuit court, district of Nebraska. In equity. Geo. H. Hilton *vs.* J. E. Jones, Jno. Hilton, *et al.* Replication to answer of Jno. Hilton. Filed Mar. 19, 1884. Elmer D. Frank, clerk. J. C. Crooker, solicitor for plaintiff.

Thereupon, afterwards, to wit, on the 6th day of May, 1884, proof of publication was filed in said case; which said proof is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

At a session of the circuit court of the United States for the district of Nebraska continued and held, pursuant to adjournment, at the United States court-room, in the city of Omaha, on the 14th day of November, 1883—the Honorable Geo. W. McCrary being present and presiding in said court—the following, among other, proceedings were had and done, to wit:

GEO. H. HILTON, Complainant,
vs.
JOHN HILTON *et al.*, Defendants. } No. 117, H. In Chancery.

Order on Absent Defendants.

And now, on this 14th day of November, A. D. 1883, being
109 at *at* the November term of said court, it having been made to appear to the satisfaction of said court that this is a suit commenced to set aside certain pretended conveyances of real property within the said district, and that John Hilton, Thomas P. Smith, Wm. C. Lincoln, James F. Hilton, Joseph B. Hilton, Nora M. Lincoln, Alice B. Ducharme, Augusta Hilton, and John M. Young, defendants herein, are not inhabitants of and have not been found within the said district, and have not voluntarily appeared in this suit, on motion of the complainant it is considered by the court and ordered that the said defendants above named be, and they are hereby, directed to appear and plead, answer, or demur to the complainant's bill of complaint on or before the first Monday in February, 1884, and that in default thereof an order be entered in this cause taking the said bill *pro confesso*.

It is further ordered by the court that at least twenty days before the said first Monday in February, 1884, a copy of this order be served upon the said defendants wherever found, if practicable, and also upon the persons or person in possession or charge of the real property described in complainant's bill of complaint, if any there be.

It is further ordered that this order be published for six consecutive weeks in the Nebraska State Journal, a newspaper published at Lincoln, in said district.

(Signed) GEO. W. McCRARY,
Circuit Judge.

THE UNITED STATES OF AMERICA, }
District of Nebraska, } *ss:*

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the above
110 and foregoing is a true copy of an order entered upon the journal of the proceedings of said court in the cause therein entitled; that I have compared the same with the original entry of the said order, and it is a true transcript therefrom and of the whole thereof.

Witness my official signature and the seal of said court, at Omaha, in said district, this 14th day of November, A. D. 1883.

[SEAL.] ELMER D. FRANK, *Clerk,*
By A. L. FRANK, *Deputy.*

Affidavit of Publication.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

H. D. Hathaway, being duly sworn, deposes and says that he is one of the proprietors of the Nebraska State Journal, a newspaper published daily and weekly and of general circulation in the county of Lancaster and State of Nebraska, and that the attached notice, Hilton *vs.* Hilton, was published in said newspaper for six weeks, consecutively, the first insertion having beem on the 30th day of November, A. D. 1883.

H. D. HATHAWAY.

Subscribed in my presence and sworn to before me this 19th day of March, A. D. 1884.

[SEAL.] J. P. HEBARD,
Notary Public.

Printer's fee, $18.00.

Received payment of G. H. Hilton, complainant,
STATE JOURNAL CO.

Upon the back of said proof of publication appear endorsements in words and figures following, to wit: No. 117, H. Geo. H. Hilton *vs.* Jones *et al.* Proof of publication. Filed May 6, 1884. Elmer D. Frank, clerk.

111 Thereupon, afterwards, to wit, at the January term of said court, on the 2nd day of March, 1885, the following proceedings were had and done in said cause as appears of record on folio 856, Journal "I" of said court, to wit:

GEORGE H. HILTON }
vs. } 117, H.
JOHN HILTON *et al.* }

On motion of the complainant, it is ordered by the court that said complainant have leave to amend his bill of complain- herein by making new parties defendant and otherwise.

Thereupon, afterwards, to wit, on the 8th day of April, 1885, amended bill was filed in said case; which said amended bill is in words and figures following, to wit:

In the Circuit Court of the United States.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

GEORGE H. HILTON, Complainant,
vs.
JAMES E. JONES, JOHN HILTON, JOSEPH B. HILTON, William C. Lincoln, Alice B. Ducharme, Augusta Hilton, Smith B. Galey, Thomas W. Lowrey, Jacob Rocke, The Otoe County National Bank of Nebraska City, August F. J. Schmutte, John Bachmann, John Eaton, Merchants' Bank of Lincoln, William H. B. Stout, William Kamplin, James A. Baker, The Omaha and Republican River Railroad Company in Nebraska, The Unknown Heirs of Seth Robinson, Deceased; Charles O. Whedon, Brand. Cole, The Sullivan Savings Institution of Claremont, New Hampshire; The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, & James F. Hilton, Respondents. } Bill in Equity.

112 *Amended Bill.*

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

Humbly complaining, your orator, Geo. H. Hilton, a resident and citizen of Ohio, by leave of this honorable court *first* first-obtained, brings this his amended bill of complaint *aga* against James E. Jones, a resident and citizen of England; John Hilton, resident and citizen of Iowa; James F. Hilton and Joseph B. Hilton, citizens and residents of Chicago, Illinois; William C. Lincoln, citizens and residents of the State of Massachusetts, formerly a resident and citizen of Chicago, State of Illinois; Alice B. Ducharme, a resident and citizen of Detroit and State of Michigan; Augusta Hilton, a resident and citizen of New York city, State of New York; Smith B. Galey, a resident of and citizen of San Francisco, State of California; Thomas W. Lowrey, Jacob Rocke, August F. J. Schmutte, William H. B. Stout, John Eaton, William Kamplin, James A. Baker, Chas. O. Whedon, Brad. Cole, John Bachman, The Merchants' Bank of Lincoln, The Omaha and Republican Valley Railroad Company, The Burlington and Missouri River Railroad Company in Nebraska, all residents and citizens of the State of Nebraska; The Unknown Heirs of Seth Robinson (deceased) of California or elsewhere, The Sullivan Savings' Institution of Claremont, New Hampshire, and The Phœnix Life Insurance Company of Hartford, Connecticut.

And thereupon your orator complains and says that heretofore, to wit, on the 26th day of October, A. D. 1861, he was the owner in

fee simple of the lands hereinafter first described; that said lands had previously been located for him by his brother, John Hilton, who then contemplated moving to Nebraska.

113 That your orator is the father of Geo. L. Hilton, James F. Hilton, and Joseph B. Hilton, who, at the date aforesaid, were infants of tender years; that your orator, having faith and confidence in the faithfulness, ability, and integrity of his said brother, John Hilton, did, on said 26th day of October, 1861, duly execute and delivered to the said John Hilton, for all the purposes therein expressed and for none other, his certain deed of trust, which is in words and figures following, to wit:

Know all men by these presents that George H. Hilton, of Hamilton county, Ohio, in consideration of one dollar and natural love, &c., to him paid by John Hilton, of Madison county, Iowa, the receipt whereof is hereby acknowledged, do- hereby grant, bargain, sell, and convey to the said John Hilton, his heirs and assigns forever, in trust for the benefit of my sons, George L., James F., and Joseph B. Hilton, in equal portions, said trustee having authority to sell and convey all or any portion at any time or in any way at his discretion for their benefit, the following-described real estate, situated in the Territory of Nebraska, viz: W. ½ of S. E. ¼ and S. W. ¼ of N. E. ¼ of section 30, town. 8 north, of range 7 east, and southwest ¼ of northwest ¼ and northwest ¼ of southwest ¼ of section 14 and northeast ¼ of southeast ¼ of section 15, town. 9 north, of range 6 east, and W. ½ and S. E. ¼ of N. E. ¼ of section 29, town. 8 north, of range 7 east, and the S. W. ¼ of section 11, town. 9 north, of range 6 east, and S. E. ¼ of N. W. ¼ and east ½ of S. W. ¼ and the S. W. ½ of S. E. ¼ of section 19, town. 8 north, of range 7 east, and N. W. ¼ of N. W. ¼ of section 3 and N. E. ¼ of N. E. ¼ of section 3, town. 7 north, of range 7 east, and the S. E. ¼ of the S. E. ¼ of sec. 33 and the S. W. ¼ of the S. W. ¼ of sec. 34, town. 8 north, of range 7 east, and the N. W. ¼ of sec. 18, town. 8 north, of range 7

114 east, and the N. E. ¼ of sec. 6, town. 8 north, of range 7 east, and the S. W. ¼ of sec. 2, town. 9 north, of range 6 east, and the S. W. ¼ of sec. 11, town. 9 north, of range 6 east, and the S. E. ¼ of sec. 2, town. 9 north, of range 6 east, and the S. E. ¼ of sec. 11, town. 9 north, of range 6 east, and S. ½ of N. W. ¼ of sec. 14 and S. E. ¼ of N. E. ¼ of sec. 15, town. 10 north, of range 6 east, and N. ½ of N. W. ¼ and N. W. ¼ of N. E. ¼ of sec. 21, town. 10 north, of range 6 east, and W. ½ of N. E. ¼ of N. E. ¼ of sec. 11, town 9 north, of range 6 east, and E. ½ of S. E. ¼ of sec. 1 and N. E. ¼ of N. E. ¼ of sec. 12, town. 8 north, of range 6 east, and E. ½ of N. W. ¼ and N. E. ¼ of S. W. ¼ of sec. 6, town 8 north, of range 7 east, being situated in Clay and Lancaster counties, of said Nebraska Territory, and all the estate, title, and interest of the said George H. Hilton, either in law or in equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging; to have and to hold the same to the only proper use of the said John Hilton in trust, as aforesaid, his heirs and assigns forever; and the said George H. Hilton, for himself and heirs, executors, — administrators, do-

hereby covenant with the said John Hilton, his heirs and assigns, that the title so conveyed is clear, free, and unincumbered by any act of the said George H. Hilton.

In witness whereof the said George H. Hilton has hereunto set his hand and seal this 27th day of October, in the year of our Lord one thousand eight hundred and sixty-one.

GEORGE H. HILTON. [SEAL.]

Signed, sealed, acknowledged, and delivered in presence of us.

L. C. WOOD.
JEREMIAH LYNCH.

Here follows the acknowledgment of the same, which is here omitted.

And your orator further says that after the delivery of the
115 said deed said John Hilton accepted the said trust, which was endorsed on said deed and recorded at the same time with the said deed as follows:

"I accept the trust above stated."
Witness my hand and seal this 26th day of November, A. D. 1861.
JOHN HILTON. [SEAL.]

And your orators further says that said deed and acknowledgment thereof, and said acceptance of the trust were on the 24th day of December, 1867, at 2 o'clock p. m., filed for record and duly recorded in the record of deeds of Lancaster county, Nebraska, in Book "A," page 252, a copy of which is herewith filed, marked Exhibit "A," and made a part thereof.

And your orators further says, under advice of counsel, that said John Hilton, as trustee aforesaid, has not exercised nor performed the said trust and powers so granted and conveyed unto him, nor has he at any time sold or conveyed to any person whomsoever the said lands or any part thereof in manner and form and for the uses and purposes for which the said lands were so conveyed to him; and, further, the said John Hilton has not resigned the said trust nor has he been removed as such trustee, but, on the contrary, as your orators *are* informed and believes, he claims and asserts his full power and authority as such trustee, nor has any court of competent jurisdiction removed him or appointed any other person or persons to execute the said trust.

And your orators further says that said John Hilton on the 16th day of September, A. D. 1863, the said lands then being of the value of twenty-five thousand dollars, pretending and assuming to perform and exercise said trust so created and granted, did, wrongfully, illegally and incautiously, and in violation of the powers and authority so granted and reposed in him, assumed and pre-
116 tended to convey by deed in fee simple the said lands to one Alice B. Hilton, now Alice B. Ducharme, for no consideration whatever, but for the pretended and grossly *in*adequate consideration of one thousand dollars, when in truth and in fact no sum of money whatever was paid or intended to be paid by the said Alice

B. to the said John Hilton; that the same was in truth and in fact a mere voluntary deed and gift without authority to do so and in manifest fraud of all the rights of your orator in the premises.

Which pretended deed was on the 10th day of January, A. D. 1868, at 7 o'clock p. m., filed for record and recorded in the record of deeds of Lancaster county, Nebraska, in Book A, page 269, a copy of which is herewith filed, marked Exhibit "B," and made part hereof.

And your orator further says that through ignorance of the law and without proper consideration ans advice in the premises and in violation of the trust and confidence reposed in said trustee the said pretended deed was intended to convey said lands to said Alice B. Hilton in trust for said George L., James F., and Joseph B. Hilton, who were then minors, with all the powers, authority, and limitations and uses confided personally to the said John Hilton as mentioned in the deed of trust so made to him; and your orators *are* informed and believe-, and so believing charges the same to be true, that it was then understood between the parties to the said deed that it was a deed of trust, as above stated, and always since publicly declared as so intended, then and to all subsequent times, to all persons and parties on enquiry.

And your orator submits to the court, under advice of counsel, that there was no authority to delegate said trust or to invest
117 any other person or persons by the said John Hilton himself with the trust so confided to him.

And your orators further says that said John Hilton, assuming and pretending to act as trustee for the said *cestui que trusts*, they then being minors, signed such pretended deed and acknowledged the same in his individual capacity and not as trustee.

Your orator further says, under advice of counsel, that by the express terms, conditions, and limitations of said deed of trust the same is limited to your orator's three sons, Geo. L. Hilton, James F., and Jos. B. Hilton, and that the same was meant and intended to be, and by the law of the land is, an estate for life only and limited to the respective lives of said Geo. L. Hilton, James F. Hilton, and Jos. B. Hilton, and your orator prays the court to so declare.

And your orator further submits, under advice of counsel, that the making of said deed to her, being without authority to do so, was but the individual act of John Hilton and not his official act as trustee, and therefore null and void.

And your orator further say- and charge- that the said Alice B. Hilton had notice and actual knowledge of the trust to the said John Hilton, with the powers, limitations, and duties thereof.

And your orator avers that the said Alice B. Hilton did not pretend or assume to make any conveyance whatever under the pretended deed so made to her, except the one hereinafter mentioned to her sister, Augusta Hilton, so far as appear- of record, or in any manner whatever.

And your orator further says that on the 22nd day of November, A. D. 1865, the said Alice B. Hilton pretended to convey to her

sister, Augusta Hilton, all of said lands as in the original
118 trust deed described, except the northeast ¼ of section 6, town. 8 north, of range 7 east, which tract was not included in the said pretended deed to said Augusta Hilton; and your orators aver that no title nor color of title passed for that tract to James E. Jones or to any one who subsequently pretended to derive title through the said Augusta Hilton, and your orator asks the court to so declare.

Also except the north ½ of the northwest ¼ and the northwest ¼ of the northeast ¼, section 21, township 10 north, of range 6 east, which tracts or the location thereof had been previously cancelled by the General Government as saline lands. All the other tracts were included in the said pretended deed to said Augusta.

And your orator further says that said Augusta Hilton at the time of the making of the said pretended deed to her was of lawful age; that she had full and actual notice of the said trust deed to John Hilton, with its powers, limitations, and uses, and all the said beneficiaries were then minors.

And your orator is informed and believes, and so believing chargeth the same as true, that the pretended deed to the said Augusta was thought to be and so understood between the grantors and grantees as a deed of trust, deriving all its validity as such from the pretended deed from John Hilton to the said Alice, with all the powers and limitations of the original trust personally made to him; and your orator avers that the grantees, said Alice and Augusta, in the said pretended deeds to them made no concealment of this, but, on the contrary, they were always understood as such by all others, and were publicly so stated by them at all times and to all persons on enquiry, and the trust was afterwards declared in writing, properly signed.

119 And your orator further says that said pretended deed to said Augusta appears as a voluntary deed and gift on its face by the consideration mentioned of one dollar and natural love and affection and was never legally executed or entitled to record.

And your orator further says and submits, under advice of counsel, that the said deed put all subsequent purchasers on enquiry as to her title and its nature; which pretended deed to said Augusta Hilton was filed for record the 10th day of January, 1868, at 8 o'clock p. m., and duly recorded in the records of deeds of said Lancaster county, in Book "A," page 273, a copy of which is herewith filed, marked Exhibit C, and made a part hereof.

And your orator further says that on the 25th day of August, A. D. 1871, the said Augusta Hilton pretended and assumed to convey to the said George L. Hilton, he then being of legal age, in trust *in trust* for her two brothers, James F. Hilton and Joseph B. Hilton, in equal portions for their benefit, the undivided two-thirds of all the lands described in the deed of trust from George H. Hilton to John Hilton (except the saline lands above accepted and the portions hereinabove mentioned before deeded by said Augusta Hilton), "the said trustee having authority to sell and convey all or any portion thereof at any time or in any way for their benefit;" which deed

was filed for record the 8th day of November, 1871, at 3.50 p. m., and duly recorded in the record of deeds of said Lancaster county, in Book "I," page 56, a copy of which is herewith filed, marked Exhibit "D," and made a part hereof.

And your orator further says and submits, under advice of counsel, that said trustee deed above mentioned was without authority,
120 illegal, and void; that the original trust deed made by the said George H. Hilton to John Hilton under and by virtue of which she, said Augusta, assumed to act, and of which the said George L. Hilton had actual and record notice, authorized no such substitution or delegation of his authority to any one by him or through him, and that the trust could not be exercised or executed but by the said John Hilton or by some person duly appointed trustee in his place by a court having competent jurisdiction after the resignation *to* or the removal of the said John Hilton from the office of trustee by such court upon a petition and notification by service on him and a proper showing to the court for that purpose, which your orator says has never been done by any court before that time or since, and which your orators ask the court to so declare.

And your orators further says that on the same day as the date above deed, to wit, the 25th day of August, A. D. 1871, the said Augusta Hilton undertook to convey to the said George L. Hilton, being after his arrival at legal age, an undivided one-third of the same lands in the last-mentioned deed described, in fee simple, as of his own right and as his individual property, under the mistaken opinion that the said George L. Hilton was entitled to the same, in fee, on his arriving at the age of 21 years, as she construed the trust made to the said John Hilton.

And your orator further says and submits to the court, under advice of counsel, that the said original trust aforesaid was not by its terms limited to the period of the proval of the said *cestui que trusts* at the age of 21 years of age, but, on the contrary, was limited
121 to the respective lives of the said George L., Joseph B., and James F. Hilton by the express terms of the said deed of trust, which was without limited period; and therefore the said deed to him individually in fee simple, and also the said deed to him in trust for your orator, were illegal and void, the trust being in John Hilton, and, further, as the said George L. Hilton could not in law or in equity act in the double capacity as trustee for your orators, them minors, and at the same time be one of the *cestui que trusts*, as he clearly was by the assumed trust under which he acted during his natural life, which your orator asks the court so to declare.

And your orator further says that the said George L. Hilton, as trustee of his two brothers, your orators, then minors, on the 11th day of September, 1872, pretended to convey to one Smith B. Galey, by pretended deed of that date, for the nominal consideration of $3,500, which was manifestly and grossly inadequate, none of which was ever paid, as your orator is informed and believes, and so believing charges the same to be true, the undivided two-thirds of

the lands following, being part of the lands described in the trust deed to John Hilton, to wit, the northeast ¼ and the northeast ¼ of the southwest ¼ and the east ½ of the northwest ¼ of section 6, township 8 north, of range 7 east, of 6th P. M.

Which said pretended deed was filed for record and duly recorded 12th September, 1872, at 3 p. m., in book of deeds of said Lancaster county "K," page 406, a copy of which is herewith filed, marked Exhibit "E," and made part hereof.

And your orator further says that on the 10th day of September, A. D. 1872, the said George L. Hilton, for the nominal consideration of $8,000, which consideration was grossly inadequate and
122 was never paid or intended to be paid, as your orator is informed and believe-, and so believing charge- the same to be true, he, the grantor, assuming to act by and through the authority derived from the original trust to said John Hilton, assumed to convey by a pretended deed of that date to the said Smith B. Galey the undivided two-thirds of the lands described in the said pretended deed in fee simple, a copy of which is Exhibit —, hereto appended and made a part of this bill, for a particular description of which lands reference is here made to said exhibit; which deed was filed for record the 19th of September, 1872, and recorded in record of deeds of said Lancaster county, in Book "K," page 445.

And your orators further say that the lands included in the two pretended deeds last above referred to, made to said Smith B. Galey, includes an undivided two-thirds portion of the lands deeded in trust as aforesaid to John Hilton and an undivided two-thirds of the lands included in the pretended deed from Augusta to said George L. Hilton, as per Exhibit "F."

And your orators further says and charge- that the said Smith B. Galey, at the time of the making of the said two pretended deeds to him, had notice and knowledge of the original deed of trust and of the pretended deeds and trust attached made to said Alice B. Hilton and Augusta Hilton, as per exhibits, and that his sole title was derived through them as the assumed trustees under the original trust.

And your orator further says that each of said two last-mentioned pretended deeds to said Gailey above referred to were illegal, without authority of law, and void, and made by the parties thereto in fraud of the rights of your orator in the premises.

And your orator further says that the said Smith B.
123 Galey pretended and assumed to convey to one William C. Lincoln by a pretended deed dated 18th day of September, 1873, the undivided two-thirds of all the lands described in the same; which pretended deed was filed for record on the 15th day of October, 1873, at 9.50 a. m., and recorded in the record of deeds of said Lancaster county, in Book "M," page 602, a copy of which is herewith filed, marked Exhibit "G," and made a part hereof, and to which reference is here made for a more particular description of said lands; and in and by said deed the said Smith B. Galey assumed and pretended to convey said lands to said William C. Lincoln "in trust for the benefit of your orators herein," James F. Hilton

and Joseph B. Hilton, in equal portions, the said trustee having authority to sell and convey all or any portion thereof at any time or in any way at his discretion for their benefit."

In the said deed the said Galey thus quoting the exact language used as to the trust confided to John Hilton in the original trust referred to.

And your orators further represents and says that by the said last-mentioned deed the said Smith B. Galey assumed and pretended to convey to the said William C. Lincoln, not only the lands in said instrument of writing described (Exhibit —), but he also pretended and assumed to convey to the said Lincoln and to clothe him with the original trust made by George H. Hilton to his brother, John Hilton, with all the powers, authority, limitations as *was* expressed in the said trust deed, dated 26th of October, 1861, herein referred to as Exhibit "A."

And your orator further says that the pretended deed above referred to from Galey to Lincoln constitutes all the pretended
124 authority and right the said Lincoln had to assume to act as trustee or to exercise the trust confided personally to the said John Hilton.

And your orator further represents and says that the last-mentioned deed from Galey to Lincoln, dated 18th September, 1873, was made by said Galey under a consciousness of the fraud above charged in the pretended sale between him and said George L. Hilton, as trustee aforesaid, and the making of the said pretended deed to Lincoln, divesting the said Galey of whatever title he may have had in the said lands or in the trust mentioned, *which* was el-arely and absolutely nothing and without even the color of authority; that the same was concocted and arranged between the said Galey and Lincoln by collusion and combination between them to defraud your orators in the premises and with the attempted purpose to place the title to said lands in Wm. C. Lincoln, as trustee of your orators; that the paltry consideration of one hundred dollars shows the baseness of the transaction on its face, and a mere reference to it is all that is required to stamp the fraud and the several parts performed by the parties to the transaction. The same on its face was notice to all subsequent purchasers and put them on enquiry.

And your orator further says that the several deeds and pretended deeds hereinbefore recited and carefully referred to in this bill constitutes the full and only chain of pretended title of said William C. Lincoln, as trustee, or of the authority for pretended trust assumed by him to the undivided two-thirds of the lands described in the original trust deed to John Hilton, as the same appears of record.

And your orator says and submits to the court, under ad-
125 vice of counsel, that the claim of said Lincoln, as trustee, and his title are fatally defective, unauthorized, illegal, and void, and your orators prays the court so to declare, and that said pretended deeds were made in fraud of the rights of your orators in the premises.

And your orator further says that on the 13th day of December, 1873, the said William C. Lincoln filed as plaintiff his certain peti-

tion in the district court of the second judicial district of Nebraska, held in and for Lancaster county, against James F. Hilton, Joseph B. Hilton, infants under the age of 21 years; Geo. H. Hilton, Alice B. Ducharme, Augusta Hilton, George L. Hilton, and Nora M. Lincoln, praying, among other things, for a decree or an order of said court directing him to sell one-half of certain lands particularly referred to in "Exhibit A," which was made a part of said petition, provided such sale could be made to advantage, and if a sale cannot be made to advantage that he be permitted to mortgage a part of the said "designated lands, and out of the money procured pay certain debts and liens therein mentioned on said property of said infants defendants."

"2nd. That the said court may by decree declare and settle the equitable as well as legal title to the lands aforesaid to be in the plaintiff as trustee for said infants."

Which petition and the exhibits thereto, A, B, and all the proceedings of said court under said petition are here referred to by your orators herein and prayed to be made a part of this bill, a certified transcript of which will be produced on the trial or the record itself.

And your orator avers and says, under advice of counsel,
126 that said petition and the prayer therein and all the pretended proceedings thereunder are without the authority of law, unprecedented in practice, and are insufficient to create or pass the title to the lands in controversy for the following reasons, to wit:

1st. The court did not have or acquire jurisdiction of the parties nor the subject-matter thereof, as appears by the petition and return of process.

2d. The petitioner, William C. Lincoln, had no legal or equitable title to the lands in controversy or any part thereof.

Your orator respectfully shows unto your honors that under the first proposition above stated the petition of said Lincoln is shrouded in absurdities, impossibilities, contradictions, and solecisms, in this:

The said Lincoln represents that he is the owner of one-third of the land in controversy in fee simple, and that he is the owner of the legal title of two-thirds thereof, and adduces his claim of title therein by the same deeds and from the same source, for as trustee of two-thirds and as owner of one-third in fee simple he prays the court in his dual capacity for authority to sell or mortgage the property of the infants at his sole discretion and appropriate the proceeds thereof as he might deem fit and proper—such a remarkable discretion as no court has ever exercised under like circumstances, and it was impossible, because John Hilton, the trustee, was not made a party defendant in the petition.

It was contradictory because it sought the disposition of these lands, held in trust by said John Hilton for minor children, without first applying to a court of competent jurisdiction for his removal as such trustee.

It was solecism because of the unfitness and absurdity of
127 the entire petition, and the prayer for relief as therein contained fully show- —.

2nd. The said Wm. C. Lincoln had no legal or equitable title to

the lands in controversy, because John Hilton, the trustee, had never been divested of his trusteeship, and the legal title in said land was in him and still is so. By no act of John Hilton could he divest himself of the same or confer the trust reposed in him upon another except by a court of competent jurisdiction, which might for good and sufficient cause remove him therefrom and appoint another in his stead.

And your orator further represents and says that George H. Hilton, Alice B. Ducharme, and Augusta Hilton, parties defendant to said petition, were not served with process or publication as required by law, and hence were never in court nor appeared or answered, which they would have done and opposed the same.

Nora M. Lincoln, the wife of the plaintiff, was made one of the parties defendant by her said husband, Wm. C. Lincoln. The plaintiff, by making his wife a party defendant to his petition, thereby presents a most anomalous practice in a court of equity and unknown in such a proceeding as prayed for in that petition.

And your orator charges that the said Lincoln in his Exhibit "B" filed with his petition, wherein for the ostensible purpose of showing to the court an indebtedness of your orators for moneys alleged therein to have been advanced by him and paid for the benefit of your orators, also taxes on the lands in controversy as paid by him, and money paid to one Smith B. Galey for a like purpose, and for further monies advanced your orators for schooling, maintenance,
and clothing and necessary support, etc., amounting, as ap-
128 pears by said Exhibit "B," to the sum of $5,408.34, which
were *were* sworn to as true by said Lincoln, who excepted to the taxes in said oath of 1871, 1872, and 1874, of which he states "were not paid, but necessary to be paid;" but which your orators aver-were never paid.

And your orator avers upon information and belief, and so believing charge- the same to be true, that said exhibits were false generally and particularly, and known to be so by said Lincoln, and made corruptly and collusively by him with one Seth Robinson, purporting to be an attorney and practicing as such in the district court of Lancaster county, Neb., where said petition and exhibits were filed; and your orators charge- that said Exhibit B was conceived in sin and brought forth in iniquity that they might deceive the court and wrong and injure your orators.

And your orators further says that on the 21st day of January, 1874, the said Seth Robinson wholly without authority fraudulently appeared as attorney for said defendants, Geo. H. Hilton, Alice B. Ducharme, Augusta Hilton, and Nora M. Lincoln, and filed a disclaimer *in* the said petition of said Wm. C. Lincoln, and to each and every part thereof. Your orators charge- this was a fraud upon the court and likewise a fraud upon the rights of all said defendants, and to wrong and injure your orators by preventing said defendants from appearing for and in behalf of said infant defendants.

And your orator — upon further examination of said proceedings on that day as aforesaid the court appointed the said Seth Robinson guardian *ad litem* of your orators and the minor defendants therein.

And your orator avers and says upon information and belief, and so believing charge the fact to be, that said Robinson
129 was not the attorney of said parties defendant first above named or either of them, and such appearance was voluntary and collusive, being a part of the conspiracy to defraud your orators of *their* rights in the premises by going through the forms of law, but in fact a conspiracy with said Wm. C. Lincoln to accomplish the confiscation of your orator's *of their* interests in said lands.

And your orator further says that at the time when said Robinson filed said disclaimer for George H. Hilton and the others said George was residing in the city of Cincinnati, Ohio, where he had taken up his residence early in the month of October before that time and had no knowledge of the commencement of said action or its existence.

Your orator avers from information and belief that their said father, G. H. Hilton, never employed said Robinson in any matter or business whatsoever, but on the contrary said Robinson has instituted and prosecuted several vexatious suits against their said father, some of which were then pending.

Your orator also says that Mrs. Ducharme and Augusta Hilton were residents of and residing in the city of Detroit, Michigan, and had no information or knowledge of said suit or appearance of said Robinson, and your orators aver that his said appearance and disclaimer was a fraud and an imposition upon the court and a wrong and injury to your orators.

And your orator further charges upon information and belief that the said Seth Robinson was the attorney-in-fact of said Lincoln in all matters and things in said petition and decree as prayed for and decreed, and that the said decree and subsequent petition appears and are in the handwriting of said Robinson, and that in said last-mentioned petition referred to said Robinson signed his name
130 as the attorney of Wm. C. Lincoln, the petitioner.

Your orator further shows unto your honors that the petition of said Wm. C. Lincoln, filed in said Lancaster county district court above referred to, nowhere therein seeks or asks said court to pass upon the legality or title of said Lincoln, either as to two-thirds of said lands referred to pretended to be held in trust by him nor as to the one-third thereof pretended to be held in fee.

If prayed for then it would have been incumbent upon him to have been shown by the proper exhibits of the title deeds through which he claimed title, in order that said court might consider and deliberately pass upon the same.

And your orator avers that there are no such exhibits filed with said petition nor attached thereto showing claim of title and challenging the court's attention to the same, and there is no reference made of such deeds or evidence in said decree. But the court is made to say that it "finds the legal title in trust" to two-thirds of said lands in controversy in said Lincoln, and also that said Lincoln is the owner in fee of the remaining one-third thereof. Yet said petitioner, in the recitals of his various deeds of conveyance to him,

he does not raise any question thereon or call upon the court to pass upon their validity, showing clearly that the title thereof was not considered and adjudicated by the court, the cause having been heard on bill and answer of the guardian *ad litem* only.

And your orator further shows to the court that *by* the judge's minutes that heard said cause and passed upon the same, found in the minutes of said judge's docket, are in the following words, to wit:

"January 21st, heard and decree entered in conformity to the prayer of petition. Bond to be given in sum of $——, sub-
131 ject to the approval of the clerk."

The cause was called up at an adjourned term; the sum in the bond not determined upon. All the circumstances connected with it clearly indicates that the court gave the matter no consideration, supposing it was an amicable arrangement desired by all parties connected with the proceeding and the decree entered *pro forma.*

Your orator represents and shows to your honors that during all the time when the pretended conveyances were being made and heretofore referred to and the said legal proceedings were being carried on your orator was *and* kept in ignorance of the same by Wm. C. Lincoln, and knew nothing what said Lincoln was doing concerning the lands conveyed by George H. Hilton unto John Hilton in trust for the benefit of your orator's sons; that they were removed by said Lincoln during said proceedings to the city of Chicago and placed to service in wholesale stores in said city, and never received any financial aid from said Lincoln whatever.

And your orator further represents and says that on the 16th day of September, 1877, the said Geo. L. Hilton, one of the *cestui que trusts* as aforesaid, died at Albany, Missouri, intestate, without ever having been married and without issue and without administration, owing no debts, and your orator says, as the father of said deceased, he is by the law regulating and prescribing the order of descent in the State of Nebraska — of lands and tenements of which his son, the said Geo. L. Hilton, was seized, and under advice of counsel your orator says as the title to said undivided one-third of the lands described in the deed of trust to John Hilton still remains
132 in said John Hilton and never legally passed out of him or was legally conveyed to any person, your orator is lawfully seized of all his interest in said land by law of descent, and if the said Geo. L. Hilton was only seized of a life estate in the undivided one-third of said lands by the terms and conditions of the original deed of trust aforesaid made to said John Hilton, then your orator, as the original owner in fee and the settler or donor, is entitled to and becomes vested of the reversion after the said life estate has terminated, and your orator asks the court so to declare.

And your orator further states that he moved from the State of Nebraska to the State of Ohio in October, 1873, and was a non-resident of Nebraska and did not return to the State of Nebraska until on or about the middle of July, 1883, when he first learned the facts hereinbefore related in this bill.

And your orator further says that said Lincoln did not comply with the order of the Lancaster county district court herein before referred to to sell or mortgage not to exceed one-half of the lands in his said petition described, yet in fact he sold and mortgaged all of said lands, of which the purchasers thereof had notice and whereby your orators have been wrongfully deprived of all benefit in the provisions made for them in their father's said deed of trust.

Your orator further says that said district court, in its order of confirmation of the actings and doings of said Lincoln, trustee as aforesaid, required and directed said Lincoln, trustee as aforesaid, to report to the probate court as to the investments and disposition of the amounts of money in his hands from the proceeds of the sales and mortgages and as to the investment and dispositions
133 thereof, and your orators say that said report so ordered was never received or ever considered by said probate court.

Your orator further says that in all the foregoing proceedings of the said district court and the acts and doings of W. C. Lincoln therein the said John Hilton, trustee, made and appointed as herein set forth, was not made a party or in any manner brought into court, and that his trust deed was then on record and was due notice to all subsequent purchasers of his estate therein and of the nature of the pretended title of said Lincoln to said lands, and the final decree in said cause and the petition of said Lincoln shows that said John Hilton was not removed by the court from his trusteeship, and that said Lincoln was not by the court appointed as trustee, although he prayed the said court that he might be appointed as such trustee, with all the powers and limitations of the original trust, and said proceedings of said court and the deeds and the mortgages made under them were without authority of law and should be set aside and held for naught; which your orators hereby pray may be so declared.

And your orator further says that on the 18th day of March, 1874, the said Wm. C. Lincoln, as trustee, by pretended deed of that date made *and* the proceedings of the district court aforesaid, *he* pretended to convey to Jas. E. Jones the undivided ¾ of the lands therein described, which was filed for record 20th of March, 1874, at 2 30 p. m. and recorded in the records of deeds of said Lancaster county, in Book "N," page 619, a copy of which is herewith filed as Exhibit "H" and made part hereof, and also referred to for a more particular description of the lands.

And your orator further says that on the 19th day of March, A.
D. 1874, the said Wm. C. Lincoln, as trustee, by pretended deed
134 of that date, made under the proceedings of the district court aforesaid, pretended to convey to said James E. Jones the undivided ¾ of the land therein described, which was filed for record 19th of March, 1874, at 10 45 a. m. and recorded in record- of deed- of said Lancaster county, in Book "N," page 604, a copy of which is herewith filed as Exhibit "I" and made part hereof, and also referred to for a more particular description of the lands, both of which deeds your orator says and submits, under advice of counsel, were without

legal authority and are illegal and void and in fraud of the rights of your orator.

And your orator says and avers that said James E. Jones had notice of the deed of trust to John Hilton and of the pretended deeds of trust to the several persons made thereafter, as hereinbefore related, from John Hilton to Alice B. Hilton down to the said Wm. C. Lincoln, and of his proceedings in said district court above referred to.

And your orator further says that on the 18th day of March, 1874, the said Wm. C. Lincoln, as trustee aforesaid, by pretended deed of that date, made under the proceedings of the district court aforesaid, pretended to convey to Thomas W. Lowry the undivided $\frac{2}{3}$ of the lands therein described, which was filed for record 20th of March, 1874, at 9.30 a. m. and duly recorded in the records of deeds of said Lancaster county, in Book "N," page 609, a copy of which is herewith filed, marked Exhibit "J," and made part hereof, and is referred to for a more particular description of the lands; which deed, your orator says and submits under advice of counsel, was without legal authority and was illegal and void and in fraud of the rights of your orator.

135 And your orator says and avers that said Thomas W. Lowrey had notice of the deed of trust to John Hilton and of the pretended deeds of trust made thereafter, as hereinbefore related, from John Hilton to Alice B. Hilton down to said Wm. C. Lincoln and his proceedings aforesaid in said district court.

And your orator further says that one Jacob Rockie, as they are informed and believe, and so believing charge the same to be true, pretends to claim some ownership or title to a portion of the said lands so conveyed to the said Thomas W. Lowrey under a pretended deed from said Lowrey to him, dated 13th of January, 1875, and filed for record 14th of January, 1875, and recorded in the records of deeds of said Lancaster county, in Book "P," page 585, a reference to which record is hereby made, which contains a particular description of the lands conveyed, copy Exhibit "K" made part hereof.

And your orator charges that said Rockie had notice of the deed of trust from said John Hilton to Alice B. Hilton and from her down to said Wm. C. Lincoln and of Lincoln's proceedings in said district court, as hereinbefore related, and that same is made without authority and illegal, null, and void, and in fraud of the rights of your orators.

And your orator further says that on the 24th day of August, 1874, the said Wm. C. Lincoln and wife, without any authority whatever or color of authority, pretended and assumed to convey to one Thomas B. Smith, by pretended deed of that date, certain lands of your orators therein described and included in the said trust deed to John Hilton, which deed was filed for record 7th of September, 1884, at 10.45 a. m., and recorded in records of deeds of said Lancaster county, in Book "O," page 611, a copy of which is

136 herewith filed, marked Exhibit "L," and made part hereof, reference to which is here made, and a particular description

of the said lands is found therein; and your orators say- said Smith had notice of the said deed of trust to John Hilton and of the pretended deeds of trust made thereafter, duly recorded, from said John to Alice B. Hilton, and from her down to the one made to the said Wm. C. Lincoln, as hereto set out, and of the other proceedings related in the district court.

And your orator says that one August F. J. Schmutte pretends to claim some ownership or title to the lands so pretended to be conveyed to said Thomas B. Smith under a pretended deed from Smith to M. P. Prey and from Prey and her husband to said Schmutte, which was filed for record the 31st of December, 1880, at one o'clock p. m., and duly recorded in the records of deeds in said Lancaster county, in Book 9, page 128, reference to which records is hereby made, and also contains a description of the lands, same as in the said deed to Smith.

And plaintiff pray- that said Smith may be made a party hereto and served with process and compelled to answer and show his exact title to the same, or pretended title, and also some tax title he assumes to have to the said land, which may be duly considered and which your orators charge- is illegal and void.

Your orator says that said Schmutte had notice of the trust deed to John Hilton, and all the pretended trust deeds from him down to Wm. C. Lincoln, and of the proceedings in the district court, as hereinbefore recited.

And your orator says and submits, under advice of counsel, that he holds the said lands in fraud of the rights of your orators,
137 and that his pretended title is without any authority and null and void, and *they* ask- the court to so declare and find.

And your orator says that the Otoe County National Bank of Nebraska City pretends to hold some title to an undivided $\frac{3}{5}$ of the lands of your orators as described in a pretended mortgage made by said Wm. C. Lincoln and wife to said Otoe County National bank, which land is described in the mortgage and here referred to for a description of the same, which was dated the 1st of November, 1873, filed for record the 10th of November, 1873, and recorded in records of mortgages of the said Lancaster county, in Book "G," page 134 of records, reference to which is hereby made as part of this bill and a copy thereof hereto attached and marked Exhibit "M."

And your orator says that afterwards said Otoe County National bank foreclosed said mortgage in the district court of Lancaster county, and said land was sold under said foreclosure and said bank purchased the same for $300, which was a grossly inadequate price for the same, and obtained a pretended deed under said sale, which is dated 30th of July, 1875, and recorded in the records of said Lancaster county, in Book "R," page 61, reference to which record is hereby made and a copy attached hereto as Exhibit "N."

And your orator says that said bank had notice of the original trust to John Hilton, and pretended trust deed from him down to Wm. C. Lincoln, as hereinbefore related, and of all said Lincoln's other proceedings as to said lands in controversy, as herein related,

and your orators pray the court to compel said bank to answer and show their title, if any legal one they have.

138 And your orator says and submits, under advice of counsel, that said mortgage to said Otoe County National Bank of Nebraska City and the deed obtained by said bank under the foreclosure of said mortgage were wholly without authority of law and null and void, and your orators pray the court so to declare.

And your orator further says that on the 2nd day of September, 1867, the said Augusta Hilton executed a deed of mortgag- to the said George H. Hilton to secure the payment of the promissory note therein stated on the southeast quarter of section two, township nine north, range sixth east, being a part of the lands conveyed to said John Hilton in trust for your orators, which mortgage and note were afterwards assigned by the said George H. Hilton to the Otoe County National Bank of Nebraska City, which bank afterwards proceeded to foreclose the same in the district court of the second judicial district of Nebraska in and for Lancaster county, and obtained a decree of foreclosure and an order for sale of the premises therein described.

And your orator says upon information and belief, and so believing charge- the same to be true, that the said decree and mortgage have been paid in full to the said bank, but the same does not appear to be receipted as paid or so entered upon the records of said court or upon the mortgage record thereof, in Book "A," page 243, and your orators say that foreclosure and decree and record of mortgage appear upon said record as if still unpaid and unsatisfied and are clouds upon your orator's title to said lands; and your orators pray that said bank may be compelled to answer a-d state their title and lien, if any, and state if said decree and mortgage

139 have been paid, and the court, if so found, may declare the same so paid and cancelled.

And your orator further alleges that on the 11th day of August, 1874, said William C. Lincoln and wife made to one John Bachman a certain pretended mortgage deed, without right or authority to do so, upon the undivided ½ of S. ½ of N. W. ¼ of section fourteen (14) and the S. E. ¼ of N. E. ¼ of section fifteen, town. ten, range six; also the N. E. ¼ of the S. E. ¼ of sec. 15, town. 9, range 6, in said Lancaster county, Nebraska, to secure the payment of $1,500.00, as described in said mortgage, recorded 27th of August, 1874, in Book of Mortgages "H," page 256, of the records of said county, reference to which is hereby made as part of this bill.

And your orator charges that said Bachman, at the above date, had notice of the record of the trust deed to John Hilton, referred to in his bill, and of the other pretended deeds to Alice B. Hilton and to Smith B. Galey and to William C. Lincoln, and of the defects of the title in them as hereinbefore stated and of the other defects as stated in this bill, and he took said mortgage subject to said notice.

And your orator alleges that on the 2nd day of April, 1875, the said John Bachman commenced a suit in the district court of the second judicial district in and for said Lancaster county, Nebraska,

to foreclose said mortgage, and at the April term, 1875, of said court he recovered judgment against said Lincoln for $1,896.25 and a decree for the sale of the said mortgaged premises in default of payment.

And on the 23rd day of October, 1875 (as recited in the deed of the sheriff), the sheriff of Lancaster county returned said lands therein described as sold to said John Bachman for the
140 sum of $3,600.00 as being not less than two-thirds of the appraised value; and it appears of record there was a motion filed to confirm said sale, which, however, does not appear of record to have been done, as exceptions to same had been previously filed; and the sale as aforesaid appears to have been set aside by an order of said court at plaintiff's costs.

And, further, on the 29th day of February, 1876, by an order of said court the case was stricken from the docket. On the final hearing of this case your orators will produce a certified transcript of the said proceedings herein stated, reference to which record is hereby made and prayed that it may be made a part of this bill.

And your orators charges in this connection that, said Lincoln having no legal title to said lands, the said district court had not jurisdiction of the subject-matter of said cause as herein recited, and the sheriff deed should be declared null and void as to your orators herein, and they pray this court so to find and so declare.

And your orator alleges that, notwithstanding the above-recited facts, the said sheriff of Lancaster county did, on the 5th day of January, 1875, executed to said John Bachman a pretended deed for said third of said land, and that said pretended deed appears of record in Book "R," page 633, of deeds, which record is here refer-ed to and made a part of this bill; and your orators pray that said John Bachman may be made a party defendant herein and served with proof and required to answer this bill, and, on final hearing of this case, said mortgage and also the sheriff's deed above referred to, made to said Bachman, may be declared as made illegally, without right or authority, and null and void, and decree rendered accordingly.

And your orator further alleges that there appears to be
141 a mortgage deed executed by one John Eaton and wife to the Merchants' Bank of Lincoln, Lancaster county, Nebraska, on the undivided ¼ of the S. ½ of the N. E. ¼ and the N. W. ¼ of section fifteen, township ten, range six, part of the land in controversy in this suit, dated 15th October, 1874, and recorded 21st of October, 1874, in Mortgage Book "H," page 440, of said Lancaster county records, to secure the payments of $3,155.85, due one year after its date.

But your orator avers that there appears no title or color of title on record in said Lancaster county directed from any of the parties, plaintiff or defendants, in this suit or from any party whatever with authority or right to convey or incumber said land; and your orators charge that said mortgage on said land is without right or legal authority and null and void and appear on record as a cloud upon your orators' title to said land or a portion thereof, and prays that

said John Eaton and wife, who are to your orators unknown, or their residence, and also *that* the Merchants' Bank of Lincoln, may be made parties defendants herein and served by process or by publication and required to answer, and on final hearing of the case said mortgage may be declared as made without legal right or authority and null and void so far as the lands of your orators are concerned or as a lien on the same.

And your orator further alleges that Wm. H. B. Stout, of Lancaster county, Nebraska, claims some right, title, or interest, as lessee or otherwise, to a portion of the lands in *consideration* in this
142 case, derived from James E. Jones; what portion or the discription of said lands your orators are not informed and have not been able to ascertain; they therefore pray that said Wm. H. B. Stout may be made a party defendant hereto and served with process and required to answer as to the nature of his claim or title and all the particulars relating to the terms on which he holds possession and description of the lands.

And your orator charges that Wilson Kemplin, of said Lancaster county, claims some right, title, or interest, as lessee or otherwise, to a portion of the lands in controversy in this case, derived from James E. Jones, to wit, the N. E. ¼ and the S. E. ¼ of the N. W. ¼ and the S. ½ of the N. E. ¼ of the N. W. ¼ and the N. E. ¼ of the N. W. ¼ section six, township eight, range seven, in said county, as per lease dated 21st March, 1883, and recorded in records of deeds of said county, Book "No. 15," page 146, reference to which record is hereby made and prayed to be made a part of this bill; and your orators pray said Wilson Kemplin be made a party defendant hereto and served with process and required to answer this bill.

And your orator further charges that James A. Baker, of said Lancaster county, claims some right, title, or interest, as lessee or otherwise, to a portion of the lands in controversy herein, derived from James E. Jones, to wit, the S. ½ of the N. W. ¼ of section fourteen, township ten, range six, in said county, as per lease dated 20th June, 1882, and recorded in records of deeds of said Lancaster county, in Book No. 13, page 437, reference to which record is hereby made and made a part of this bill; your orators pray that said James A. Baker may be made a party defendant hereto, served with process, and required to answer this bill.

143 And your orator charges that the above-named Wm. H. B. Stout, Wilson Kemplin, and James A. Baker each had notice of record at the above periods of the trust deed to John Hilton and of all the pretended trust deeds as recited in this bill and of the other defects of the title of the parties under whom they claim, as recited in the bill, and that their respective titles to hold said lands are each illegal and without authority of law and should be declared null and void.

And your orator further represents and says that the Omaha & Republican Valley Railroad Company, incorporated by and doing business in Nebraska, claim to have a right of way for said railroad in and through part of the land in controversy in this case, derived from August F. Schmutte and James E Jones respectively, to wit, part of

the W. ½ of the S. E. ¼ and the S. W. ¼ of the N. E. ¼ of section thirty, township eight, range seven, being a strip of land 100 feet wide, and also the same through the E. ½ of the S. E. ¼ of section two and three, E. ½ of the S. W. ¼ of section eleven, township nine, range six, being in Lancaster county, as now located on said land; and your orators allege that said railroad company had notice of the filing of the trust deeds herein stated to John Hilton, of the several pretended trust deeds as recited in this bill, and also notice of record of the other defects of title to said land of the person or persons under whom they claim, as related in this bill, and charge that their said title is illegal and without authority of law and should be declared null and void; and your orators pray that said railroad company may be made party defendant hereto and served with process and required to answer this bill, and that *no* final hearing of this cause

their title or right of way — they may be required to account
144 to your orators for the use and occupancy of the land appropriated.

And your orator further represents and says that the Burlington & Missouri River Railroad Company in Nebraska, assignee of the Atchison & Nebraska Railway Company, incorporated by and doing business in the State of Nebraska, claim to have a right of way for said railroad in and through part of the lands in controversy in this case, derived from George L. Hilton and as alleged trustee of your orators, as per deed dated 9th March, 1872, and recorded 12th March, 1872, in records of deeds of Lancaster county, in Book J, page 359, reference to which record is hereby made and made a part hereof for description of the land, etc., and also the right of way of land in controversy herein derived from James E. Jones by contract or instrument of writing for that purpose, recorded in said Lancaster county in Miscellaneous Record Book D, page 557, made June 16, 1882, reference to which record is hereby made for a description of the land.

And your orators charge that said Atchison and Nebraska Railroad Company and the Burlington and Missouri River Railroad Company in Nebraska had notice of record of the trust deed to John Hilton and the several pretended trust deeds referred to in this bill and the other defects of title of the parties under whom they claim, as alleged in this bill; that their title is illegal and without authority of law and null and void; and your orators pray that said railroad companies may be made parties defendant, served with process, and required to answer, and that on final hearing their title or right of way may be declared null and void and they may be required to account to your orators for the use and occupancy of said land.

And your orator further represents that on the 14th day of
145 February, A. D. 1874, William C. Lincoln, as trustee of James F. Hilton and Joseph B. Hilton, your orators, and Nora Lincoln, his wife, executed what purports to be a trust deed to Seth Robinson in trust for Charles O. Whedon, of Lancaster county, Nebraska, which was filed for record and recorded in said county the 16th of February, 1874, in Book G, page 367, reference to which record is hereby made as a part of the bill, for the consid-

eration of one dollar, etc., on the S. W. ¼ of section 2 and the S. E. ¼ of section 2, township 9, range 6, deducting 60 acres before sold, making 260 acres, in which deed it is recited that said grantor owes the said Charles O. Whedon by promissory note four thousand dollars, payable 12 months after date, at 12 per cent. per annum interest, and said Robinson is made trustee with power to sell said land if said note is not paid at maturity, to be sold after 28 days' notice, at public vendue, for cash. No appraisement is mentioned, and it is further stated in said deed that the decree of the district court of Lancaster county, Neb., of 23d of January, 1874, is referred to as authority for the making of said deed.

And your orator further represents that on the 20th day of March, A. D. 1874, the said Seth Robinson and Charles O. Whedon executed what purported to be a quitclaim deed to the said Wm. C. Lincoln, in his individual capacity and right, for the consideration of one dollar, for the land so deeded above by the said Wm. C. Lincoln as trustee of your said orators, which deed is recorded in records of deeds of said Lancaster county, in Book "G," page 454, reference to which record is hereby made and prayed to be made a part of this bill; in which deed it is recited that *that* "this deed is
146 made to vest the title to said land in said Wm. C. Lincoln as of his first and former estate, being the same conveyance on the 14th February, 1874, to the said Robinson in trust for sa-d Charles O. Whedon, the same being fully paid."

And your orator charges that no said indebtedness as represented in said trust deed existed, and said Whedon has since admitted that he never had any such note and knew nothing of the transaction above stated; yet notwithstanding your orators charge the said Whedon joined in the execution of the said quitclaim deed as above stated, which was acknowledged in due form.

Your orator charges that the whole transaction was collusive and fraudulent on the part of the said Lincoln & Robinson and made to cheat and swindle your orators, then minors, out of said lands and an attempt to vest the title to the said lands absolutely in said Lincoln. A mere recital of the facts and a reference to the deeds are sufficient to stamp the transactions referred to with fraud and deceit.

And your orator further represents that since the execution of the last-mentioned deed the said Seth Robinson, deceased in the State of California, and his heirs, if any he has, or their present residence *is* unknown to your orator, and prays as the unknown heirs of the said Seth Robinson, deceased, they may be made parties defendant hereto. The said Charles O. Whedon is a resident of Lincoln, Nebraska, and they pray he may be made party defendant hereto, served with process, and required to answer this bill.

And your orator further represents in this connection that on the 16th day of February, A. D. 1874, the said Charles O. Whedon as-
147 signed to one Brand Cole, of Douglas county, Nebraska, who to your orators or his present residence is unknown, all his right, title and interest of, in, and to said trust deed and the land described, which assignment is recorded the 16th of February,

1874, in the records of said Lancaster county, in Book "G," page 370, and there appears to be no record of release or cancellation of same by said Cole. Your orators represent that said deed of trust and the assignment of the same as aforesaid appears on rec-rd as a cloud upon your or-tors' title to said land, and that the said assignment was also fraudulent and without consideration; that the said Brand Cole, as also the said Robinson and Whedon, had notice of record of all the defects of title in said Lincoln to said land as charged in this bill or his right to encumber the same.

And your orator pray- that said Brand Cole may also be made party defendant hereto and served with process or by publication and required to answer this bill and show by what means and how he obtained, if at all, the assignment referred to.

And your orator prays on final hearing of this case that said trust deed from Lincoln to Robinson and Whedon and the assignment of the same to Brad Cole may be set aside and declared null and void; also the quitclaim deed referred to pretending to vest an absolute title to said land in said Lincoln.

And your orators further represent that the Sullivan Savings Institution of Claremont, New Hampshire, appear to have three several mortgages, appearing to be in full force and unpaid, on portions of the land in controversy in this suit claimed to be owned by James E. Jones as follows, to wit: 1st. James E. Jones to said Sullivan Saving- Institution, dated 10th of September, 1877, for $2,000, recorded in the mortgage record of Lancaster county, Neb., in Book "M," page 589.

148 2d. James E. Jones to said Sullivan Savings Institution, dated 28th of January, 1879, for $1,000, with ten per cent. interest, recorded the 9th of February, 1878, record of mortgages, Book "N," page 405.

3d. James E. Jones to said Sullivan Savings Institution, dated 8th of January, 1878, for $1,000, with ten per cent. interest, recorded 9th of February, 1878, in record of mortgages, Book "N," page 405.

Reference to the records of the said several mortgages is hereby made and prayed to be made a part of this bill.

And your orator charges that said savings institution had notice of record of all the illegality and defects of title to the land described in said m ortgages of James E. Jones as particularly charged in this bill, and they pray that the said Sullivan Savings Institution of Claremont, New Hampshire, may be made party defendant hereto and served with process or by publication and required to answer, and upon final hearing of this case said several mortgages may be declared null and void so far as being a lien or incumbrance upon your orator's land in the said several mortgages described.

And your orator further represents that the Phoenix Mutual Life Insurance Company of Hartford, Conn., appears to have a mortgage, which appears to be in full force and unpaid, on a portion of the land in controversy in this suit, claimed to be owned by Jacob Rocke, to wit, from Jacob Rocke to said insurance company, dated 7th of December, 1877, for $500, recorded in the record of mortgages

in said Lancaster county, Nebraska, the 10th of December, 1877, in Book "N," page 242. Reference to the record of said mortgage is hereby made and prayed to be made part hereof; and your
149 orators charge that said Phœnix Mutual Life Insurance Company had notice of record of all the defects and illegality of the title of said Rocke as particularly charged in this bill as to the land described in said mortgage; and your orators pray that said Phœnix Mutual Life Insurance Company of Hartford, Conn., may be made party defendant hereto and served with process or by publication and required to answer this bill, and on final hearing of this case the said mortgage may be declared null and void so far as the same is an incumbrance on the land of your orators described in said mortgage.

And your orator submits to your honors, under advice of counsel, that the petition of Wm. C. Lincoln, filed in said district court, and all orders, decrees, and confirmations under the same made by said court were without the authority of law in the premises, and the said court had not jurisdiction of the subject-matter or the necessary parties in the case, and therefore said proceedings were fraudulent and void as against the rights of your orators herein.

Your orator further says that the matters and things in controversy exceed the sum in value of five thousand dollars, exclusive of costs, and that they, being without remedy at law, can only have relief in a court of equity in the premises.

And your orator prays that upon final hearing of this cause the following relief may be granted them, viz:

That the several deeds herein referred to of John Hilton to Alice B. Hilton (now Alice B. Ducharme), and from her to Augusta Hilton, and from Augusta Hilton to George L. Hilton, and from George L. Hilton to Smith B. Galey, and from Smith B. Galey to Wm. C. Lincoln, and from Wm. C. Lincoln as trustee to James E. Jones, and from Wm. C. Lincoln to Thos. W. Lowrey; also the mortgage by said Lincoln to John M. Young, and the deed of Thos. W.
150 Lowrey to Jacob Rocke, and the deed of Wm. C. Lincoln to Thos. P. Smith, and from said Smith to M. J. Prey, and from said Pray to Augusta F. Schmutte, and the sheriff's deed to John Backman; also a mortgage of Wm. C. Lincoln to the Otoe County National Bank of Nebraska City, and the mortgage to the Merchants Bank of Lincoln made by John Eaton, and the leases made to W. H. B. Stout, to Wilson Kamplin and James A. Baker, and the deeds or contracts for right of way of the Omaha and Republican Valley railroad and the Burlington and Missouri River railroad in Nebraska, the mortgages of the Sullivan Savings Institution of Claremont, New Hampshire, and the Phœnix Mutual Life Insurance Company of Hartford, Connecticut, and the trust deed to Seth Robinson and Chas. O. Whedon and asignments of same to Brand Cole, and each and every such deed and leases and mortgages be set aside and ordered cancelled and declared null and void, and that all the said proceedings had in the district court of Lancaster county, Nebraska, pertaining to the title of the lands in controversy may be declared of no effect as against the interests of your orator, and that all deeds

and incumbrances made under such decree and orders and foreclosures be also declared null and void so far as effects the title of your orators, and that any of the claimants herein made defendants and claiming title or interest in any of — lands may be perpetually enjoined from asserting any interest of estate in said premises adverse to your orators.

And your orator prays that said John Hilton may be removed from his said trust and some other proper and discreet person be appointed by the court in his stead to take charge of and execute said trust in pursuance of the object and intent of the settler for the benefit of your orators herein.

151 And your orator further prays that the following persons, who appear to have or claim some interest in the matters in controversy in this bill, may be made parties defendant thereto, and that a writ of subpœna may be issued for them and each of them respectively, to wit:

James E. Jones, John Hilton, James L. Hilton, William C. Lincoln, Alice B. Ducharme, Augusta Hilton, Smith B. Galey, Thomas W. Lowrey, Jacob Rockie, The Otoe County National Bank of Nebraska City, August F. J. Schmutte, John Backman, John Eaton, Merchants' Bank of Lincoln, William H. B. Stout, William Kamplin, James A. Baker, The Omaha and Republican Valley Railroad Company, The Burlington and Missouri River Railroad Company in Nebraska, the unknown heirs of Seth Robinson (deceased), Charles O. Whedon, Brand Cole, The Sullivan Savings Institution of Claremont, New Hampshire, The Phœnix Mutual Life Insurance Company of Hartford, Connecticut, commanding them at a certain time and under a certain penalty therein to be limited personally to appear before this honorable court and then and there full, true, and perfect answers make to all and singular the premises, but not under oath or affirmation, which, being under oath, is hereby waived and the benefit thereof to your orators referred, and, further, to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem agreeable to equity and good conscience.

And your orators will ever pray.

JOHN S. GREGORY,
Solicitor for Complainants and of Counsel.

Upon the back of said amended bill appear endorsements in words and figures following, to wit: No. 117, Doc. H. Geo. H. Hilton *vs.* John Hilton, James E. Jones, *et als.* Amended
152 bill. Filed April 8, 1885. Elmer D. Frank, clerk. John Gregory, pl'ff's att'y.

Thereupon, afterwards, to wit, on the 28th day of January, 1886, answer of Jacob Rocke to amended bill was filed in said case; which said answer is in words and figures following, to wit:

Answer of Jacob Rocke.

In the Circuit Court of the United States.

UNITED STATES OF AMERICA, }
District of Nebraska. }

GEORGE H. HILTON, Complainant,
vs.
JAMES E. JONES, JOHN HILTON, JACOB ROCKE, *et als.*, Def'ts.
} Answer of Jacob Rocke to Amended Bill.

Now comes the said Jacob Rocke, one of the said defendants to the said amended bill of complaint of George H. Hilton, complainant, a-d for his answer to said bill of complaint says that this defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said amended bill contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, says that it is true that he claims to be and in fact is the owner in fee simple absolute of all of the following-described lands situate in Lancaster county, State of Nebraska, to wit: The northwest (N.W.) quarter of the northwest quarter of section number three (3), in township number seven (7), in range number seven; also the northeast
153 quarter of the northeast quarter of section numbered four, in town. numbered seven (7), in range numbered seven (7); and also the southeast quarter of the southeast quarter of section number thirty-three (33) and the southwest quarter of the southwest quarter of section numbered thirty-four (34), both of said last two described tracts of land being situate in township numbered eight (8) north, of range numbered seven, in said Lancaster county; and defendant says that at the time of the commencement of this suit the said complainant had not any interest and estate, legal or equitable, in and to the said *land* lands or any part thereof; and defendant further says that for a valuable consideration by him paid to his grantors for the said lands he purchased the said lands of his grantors in good faith, without any knowledge or notice whatever of any claim, interest, estate, or pretended claim, interest, or estate of the said complainant in and to the said lands or any part thereof.

This defendant further says that he admits the execution and delivery of the said deed by the said George H. Hilton to the said John Hilton so by him executed on the said 26th day of October, 1861, and avers the fact to be that the said George H. Hilton hath hitherto, from the said execution of the said deed up to the time of the commencement of this suit, held out and maintained to all persons whomsoever that the said deed lawfully empowered the said John Hilton and his grantees, at his and their discretion, to sell

and convey all or any portion at any time or in any manner — the said lands in fee simple absolute or otherwise to any persons whomsoever, and that the said lands and parts thereof have been so sold and conveyed upon the personal request and with the
154 personal knowledge of the said George H. Hilton, and that said complainant hath at all times acquies-ed therein and now doth so acquiess- and consent thereunto; and this defendant denies all and every and all manner of unlawful combination and confederation wherewith he is by said complainant's said bill charged, and without this, there is any other matter, cause, or thing in the said complainant's bill contained material or necessary for *for* this defendant to answer unto and not herein and hereby well and sufficiently traversed and avoided and denied is true, to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

JAS. E. PHILPOTT,
Solicitor for Defendant Jacob Rocke.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117 H. George H. Hilton *vs.* James E. Jones, John Hilton, Jacob Rocke, *et als.* Answer of Jacob Rocke to amended bill. Consent is hereby given to file this answer. John S. Gregory, att'y for pl'ff. Filed Jan. 28, 1886. Elmer D. Frank, clerk. Jas. E. Philpott, solicitor for Jacob Rocke.

Thereupon, afterwards, at the January term of said court, on the 1st day of February, 1886, the following proceedings were had and done in said cause, as appears of record on folio 817, Journal "K" of said court, to wit:

GEORGE H. HILTON
vs. } 117, H.
JOHN HILTON *et al.*

155 On motion it is ordered by the court that time be extended for respondents to answer by February 20th, 1886, and that complainant file his replication to said answer by March first, 1886; and it is further ordered by the court that the parties hereto have leave to take proofs in term time.

Thereupon, afterwards, on the 8th day of February, 1886, separate answer of the Otoe County National Bank of Nebraska City was refiled in said case; which said answer is in words and figures following, to wit:

In the District Court of the United States within and for the District of Nebraska.

GEORGE H. HILTON, Complainant,
vs.
JAMES E. JONES, JOHN HILTON, THOMAS W. LOWREY, THOMAS P. Smith, William C. Lincoln, James F. Hilton, Joseph B. Lincoln, Alice B. Ducharme, Augusta Hilton, Smith B. Galey, Jacob Rocke, The State National Bank of Lincoln, Nebraska; Otoe County National Bank of Nebraska City, Nebraska; John M. Young, and August F. J. Schnutte and Others, Respondents.

Answer of Otoe County National Bank of Nebraska City to Amended Bill.

Answer of the Otoe County National Bank of Nebraska City, Nebraska, one of the above-named respondents, to the amended bill of complaint of George H. Hilton, complainant.

This respondent, now and at all times hereafter saving and reserving unto himself all benefit and advantage of all and all manner of objections and exceptions which can or may be taken or reserved to the many errors, uncertainties, and other imper-
156 fections and insufficiencies in the said complainant's said bill of complaint contained, for answer thereto or unto so much or such parts thereof as this respondent is advised is or are material or necessary for it to make answer unto, this respondent, answering, says—

That it admits that on the 26th day of October, 1861, said complainant was the owner in fee simple of the said several tracts of land described in said bill of complaint, and that on said day the said complainant made, executed, and delivered unto the said John Hilton the deed of conveyance of said lands and every of them in said bill of complaint set forth and described, and that said deeds were filed for record in the clerk's office of Lancaster county and described therein as in said bill averred, and that said John Hilton accepted said trust by endorsement on said deed as in said bill averred, and your respondents avers that the said John Hilton hath fully performed the said trust and exercised the powers in and by said deed created and granted in manner and form as therein directed and for the benefit of said *cestui que trusts*, as by said deed intended, in this, to wit: That on the 16th day of September, 1863, the said John Hilton, acting under and by virtue of the said deed of conveyance and pursuant to the powers therein contained, and with the knowledge, consent, and express direction of the said George H. Hilton and of the said George L. Hilton, James F. Hilton, and Joseph B. Hilton, them all and each of them arrived at the years of discretion, and for the purpose of assuming, conserving, and protecting the interests of said *cestui que trusts*, and for a valuable consideration paid and promised to be paid to them for their benefit by

the said Alice B. Hilton, did convey all and every of said
157 lands to the said Alice H. Hilton, now by marriage Alice B. Ducharme, in manner and form by deed bearing said last-named date, as in said bill of complaint averred, and that said deed was duly filed for record and recorded, as in said bill of complaint averred.

And this respondent avers that the said Alice B. Ducharme, born Alice B. Hilton, hath fully performed the trusts and exercised the powers by the said last above-mentioned deed of conveyance created and granted, to wit:

That on the 2nd day of November, 1865, the said Alice B. Ducharme, born Alice B. Hilton, acting under and by virtue of the said several deeds of conveyance and pursuant to the powers therein contained and of the advice, consent, and express direction of the said complainant and of the said *cestui que trusts*, and for the purpose of further assuring, protecting, and conserving their interests in said trust and in said lands, and for a valuable consideration paid and promised to be paid by the said Augusta Hilton for the benefit of said George L. Hilton, James F. Hilton, and Joseph B. Hilton, did convey all and every of said lands to the said Augusta Hilton in manner and form and by deed bearing said last-named date, as in said bill of complaint averred, which deed was filed for record and recorded, as in said bill averred.

And this respondent further avers that on the 26th day of October, 1861, and simultaneously with the execution of the deed of conveyance by said George H. Hilton to the said John Hilton, in the said bill of complaint described and set forth, the said George
158 H. Hilton, also by his certain deed of conveyance bearing said last-named date, duly signed, witnessed, and acknowledged and delivered for a valuable consideration, duly granted, bargained, sold, and conveyed all and every of said lands mentioned in said bill of complaint, upon the same trusts as expressed in said deeds, for the benefit of said George L. Hilton, James F. Hilton, and Joseph B. Hilton, as were contained in the said deed by the said George H. Hilton to the said John Hilton and which said deed granted by express words the same powers to the said Augusta Hilton of and concerning all and every of said lands to grant, sell, and convey the same or any of the same at any time at her discretion or in any way or manner at her discretion for the benefit of said George L. Hilton, James F. Hilton, and Joseph B. Hilton, as were granted to said John Hilton by the said deed of conveyance in said bill of complaint first described.

And this respondent further represents unto your honors that said deed from the said George H. Hilton to the said Augusta Hilton after the same had been signed, executed, acknowledged, and delivered to the said Augusta as aforesaid became lost or destroyed, and now and for many years hitherto the whereabouts and existence of the same is and has been wholly unknown, and that said deed has never been filed for record or recorded in any public office.

And this respondent further represents to your honors that after the making of each and all of the several conveyances hereinbefore

referred to and the execution and delivery of all and every of the said several deeds of conveyances hereinbefore mentioned the said George H. Hilton, for the purpose of supplying the absence of said deed so executed and delivered by him to the said Augusta
159 Hilton and which had become lost or destroyed as aforesaid, and for the purpose of in all things affirming and *pertending* all and singular the titles, estates, trusts, and powers theretofore created, granted, and *denied* by the said several conveyances hereinbefore mentioned in manner and form as hereinbefore set forth, and for the purpose of further assu*m*ing and confirming the legal title of all and every of said lands and the said estates and trusts therein in the said Augusta Hilton, and her powers so as aforesaid created and granted to grant, bargain, — sell all and every of said lands at any time or in any manner for the benefit of said James F. Hilton, Joseph B. Hilton, and George L. Hilton at her discretion, *and* by his deed of conveyance, bearing date the 8th day of May, 1866, and on the said day made, signed, acknowledged, and delivered to the said Augusta Hilton, in terms grant, bargain, sell, and convey all and every of said lands to the said Augusta Hilton, expressly, however, upon the same trust, but as of fee, and with the same express powers to grant, bargain, sell, and convey the same or any of them at any time and in any way as were created, granted, and conferred as aforesaid by the said former deed of October 26, 1861, by the said George H. Hilton to the said Augusta; said deed last executed as aforesaid was duly filed for record and recorded in the clerk's office of Lancaster county, Nebraska, on the — day of —, 18—, and a copy thereof is hereto annexed, marked Exhibit "A," and made a part hereof.

And this respondent respectfully submits unto your honors under the advice of counsel that whatever estates, trusts, and powers were created, granted, aliened, or conferred by the said George H. Hilton by his said several deeds of conveyances executed and deliv-
160 ered on the 26th day of October, 1861, were thereby created, aliened, granted, and vested in and to the said John Hilton and Augusta Hilton jointly, and that by operation of law and of the said several mesne conveyances from the said John Hilton to the said Alice B. Ducharme, born Alice B. Hilton, and from the said Alice B. to the said Augusta Hilton all and every of such title and estates, trusts and powers, became and were on and before the said 18th day of May, 1866, vested in said Augusta Hilton solely; and the said John Hilton and the said Alice B. Hilton, by marriage Alice B. Ducharme, each and both of them on and before said date became and were wholly divested of all and every part thereof; and this respondent submits under the advice of counsel that all and every of the respondents herein and all persons claiming through or under them or either of them, and especially the said George H. Hilton, are and is by reason of the foregoing facts and circumstances and of said several deeds and conveyances and of right ought to be forever estopped from claiming or asserting that, at the date last aforesaid, the title to any of said lands or estates were or was in any other person than the said Augusta Hilton.

And this respondent further represents to your honors that the nature, *estate*, and purposes of the said trusts upon which said lands were conveyed by the said George H. Hilton to the said John Hilton and Augusta Hilton and which became solely vested in said Augusta Hilton as aforesaid were never declared nor expressed in writing, except by the above-mentioned clause in said deed; but this respondent avers that at the time said trust estate was created the said *cestui que trusts*, George L. Hilton, James F. Hilton, and Joseph B. Hilton, were infant sons of the said George H. Hilton, and that said trust was
161 at the time of its creation intended and orally declared by said George H. Hilton and accepted by the said John Hilton and Augusta Hilton for retaining, protecting, and *retaining* title to said lands and preserving the same from the creditors of the said George H. Hilton, who was then indebted to divers persons in large and sundry amounts and was wholly destitute of other property, in a person of mature years and discretion capable of dealing with, managing, controlling, granting, bargaining, selling, conveying, and encumbering the same or any portion of the same, at the discretion of said trustee or trustees, during the minority of said *cestui que trusts* for their support, maintainance, and education of each and all of the minors, and to convey to each of said minors upon his obtaining the age of majority one-third in severalty or an undivided one-third of all and every of such lands as should remain undisposed of at the date of such majority.

And this — further represents to your honors that on the 25th day of August, 1871, the said George L. Hilton had attained the years of his majority and had become entitled to a conveyance in fee simple absolute according to the terms and conditions and true intent of said trust and the estate and powers of and concerning the same, and — said lands so vested in said Augusta Hilton as aforesaid to a conveyance of one undivided third part of all and every of said lands, and thereupon, on the day last aforesaid, pursuant to the terms and intent of said trust and by virtue of the powers so vested in her as aforesaid, the said Augusta Hilton did sell and convey to the said George L. Hilton one undivided one-third part of all of said lands by deed of bargain and sale in manner and form
162 as in said bill alleged; to a copy of said deed, annexed to said bill of complaint and marked Exhibit "D," this respondent begs leave respectfully to refer; and this respondent avers that said last-named deed and conveyance was so made as aforesaid by the advice, consent, and procurement of the said complainant, George H. Hilton, for the purpose of vesting in the said George L. Hilton the title in fee simple absolute of said one undivided third of said lands, and that said deed did in terms and in fact so vest the same.

And this respondent further avers that on the 11th day of September, A. D. 1872, the said George L. Hilton, being of mature years and so seized in his own right in fee simple absolute of, in, and to one undivided third part of all and every of said lands, did, by and with the full knowledge, advice, consent, and procurement of the said complainant and for a valuable consideration to him in hand

paid by one Smith B. Galey, respondent herein, by his good and sufficient deed of conveyance, duly executed and delivered, convey to the said Galey said undivided one-third part of all and every of said lands, and this respondent avers that said conveyance was for a valuable and fully adequate consideration, and that said deed hath been duly filed for record and recorded in the office of the clerk of Lancaster county, Nebraska.

And this respondent further avers that on the 18th day of September, A. D. 1883, the said Smith B. Galey, being so seized in fee simple in his own right of said undivided one-third part of all and every of said lands as aforesaid, did for a valuable consideration to him in hand paid by the said William C. Lincoln and with the knowledge, advice, consent, and procurement of the said complainant, George H. Hilton, by his good and sufficient deed of conveyance *did* grant, bargain, sell, and convey *convey* said undivided one-third of all and every of said lands in fee simple
163 to the said William C. Lincoln, which deed was duly signed, witnesses, acknowledged, delivered, and filed for record in the office of the clerk, and — a copy thereof annexed to said bill of complaint and marked "Exhibit R" this respondent begs leave respectfully to refer.

And this respondent further represents to your honors that on the 13th day of December, A. D. 1873, the said William C. Lincoln, being vested in fee simple absolute with the title to said undivided one-third of all and every of said lands as aforesaid, began — in the district court of the second judicial district of Nebraska in and for Lancaster county, in which action said Lincoln was plaintiff and the said George H. Hilton and others were defendants, of which action and all the parties thereto and of the subject-matter thereof said court, being a court of record of original and general jurisdiction, *and* full and complete jurisdiction to hear and try and determine the same, and in which action the said Lincoln, as such plaintiff, filed his petition in conformity to the practice of said court, in which he alleged, among other things—the said Lincoln, as such plaintiff, averred that he was, by reason of the said several conveyances hereinbefore set forth, the owner in fee simple absolute of the undivided one-third part aforesaid of all and every of said lands, and in which he averred that the said George H. Hilton claimed or pretended to have some title, claim, lien, or interest in or to said undivided one-third of said lands or a part thereof, and prayed that the said George H. Hilton be required to exhibit such pretended claims, title, or interest, if any he had, and that the same be adjudged void, and that the said title of the said Lincoln be affirmed therein, and this respondent avers that thereupon the said
164 George H. Hilton and the said George L. Hilton and others of said defendants, during the pendency of said action, personally appeared in said court and, in writing, expressly disclaimed any and all title, claim, lien, or interest of whatsoever name or nature in or to said lands or any of them; and this respondent further represents that after said cause came on to be heard in said court upon the pleadings and proofs therein, to wit, on the 21st day

of January, 1874, that being one of the days of a regular term of said court, and that thereafter, on the day aforesaid, the said court did, upon being fully advised in the premises, upon consideration thereof, ful-y find that all and singular t-e allegations of said petition were true, and, upon due consideration, did duly adjudge and decree, among other things, that the said William C. Lincoln was the owner in fee simple absolute of said undivided third part of all and every of said lands.

And this respondent submits to your honors, under the advice of counsel, that by reason of said several deeds of conveyance and of the said facts and circumstances hereinbefore set forth and narrated and of the said decree and the said disclaimer, findings, and proceedings in said action in said district court in and for Lancaster county, Nebraska, the said George H. Hilton and all and every person or persons claiming or to claim through or under him is and are and of right ought to be forever estopped to question or deny that at the date of the rendition of said decree said William C. Lincoln was the owner in fee simple absolute of the undivided one-third part in and to all and every of said lands, with full right, power, and authority to sell and convey the same; and your respondent
165 avers that said decree at all times has been and now is in full force in said court, wholly unimpeached and unappealed from in said district court.

And this respondent further represents to your honors that on the 1st day of November, 1873, the said William C. Lincoln, being the absolute owner in fee simple of the undivided ⅓ of all of said lands in complainant's bill mentioned, did make, execute, and deliver to this respondent his certain mortgage deed of that date duly signed, acknowledged by himself and his wife, Nora Lincoln, whereby they so conveyed to this respondent, The Otoe County National Bank of Nebraska City, Nebraska, the undivided ⅓ of the southwest fourth (¼) of the northwest quarter (¼) and the northwest fourth (¼) of the southwest quarter (¼) of section No. 14, fourteen, in township No. nine (9) north, of range No. six (6) east, of the sixth P. meridian, Lancaster county, Nebraska, which mortgage deed was duly filed and executed in the office of the clerk of Lancaster county, Nebraska, on the 10th of Nov., 1883, on page 133 of Book "C" of the mortgage records of said county, reference to which record is hereby respectfully made; that such mortgage was given to secure the payment to this respondent of the sum of $500; that such mortgage was given by said Lincoln and wife to this respondent at the special instance and request of this complainant herein, and was so given in payment of $500 due to this respondent from said George H. Hilton, complainant, for money at and before that time due to this respondent from him, and this respondent took such mortgage in part payment of its debt against said George H. Hilton at his special instance and request; and this respondent was persuaded and induced by said complainant to take such mortgage by his representations that said Lincoln was the owner in fee simple of
166 said lands, with good right to sell, mortgage, and convey the

same, and that said George H. Hilton receive said sum of $500, the consideration of such mortgage.

That afterwards and on or about the — day of ——, 1875, this respondent did duly foreclose such mortgages in the district court of Lancaster county, Nebraska, and at the April term of said court for 1875 this respondent obtained in said court a decree of foreclosure of said mortgage and an order for the sale of said land to pay the sum of $572.56 by said court found due to this respondent on said mortgage, and on the 14th day of June, 1875, one Parem England, by the appointment of said court special master for that purpose, did duly sell said land at public auction to this respondent for the sum of $300 after having duly and lawfully given notice of the time and place of such sale, and afterwards said sale was by said court duly examined and confirmed, and such special master was ordered to deed and convey said land to this respondent, and on the 30th day of July, 1875, said Parem England as such special master did, by virtue of the order of sale issued to him out of such court in said case, and by the order of such court so made when such sale was confirmed, by his deed dated July 30, 1875, and duly signed, executed, and acknowledged and delivered to this respondent, convey to this respondent said lands so in said mortgage conveyed, which deed is duly recorded on pages 61 and 62 of Book "R" of deed records of said Lancaster county, a copy of which deed, marked "A," is hereto annexed; and this respondent then became and was the owner in fee simple of said land, and thereafter & since that date had and held said land in its possession under said deed and since paid the taxes levied thereon; and your respondent fur-
167 ther says that by reason of the premises the said complainant is estopped from questioning this respondent's title to said ½ of said land and from claiming such land.

This respondent further says that it is true that on the 1st day of Feb'y, 1869, Augusta Hilton, by mortgage deed, conveyed the S. E. ¼ of sec. 2, town. 9, range 6, in said county, to George H. Hilton, and said George H. Hilton assigned, sold, and delivered such mortgage to this respondent.

That such mortgage was by him so assigned to this respondent for a good and valuable consideration, being for about $1,400 cash paid to him by this respondent, and this respondent denies that said Augusta Hilton, the mortgagor, or said George H. Hilton have ever paid said mortgage debt to this respondent. This respondent further says that said George H. Hilton has no right, title, or interest in or to said mortgaged premises.

And this respondent, further answering said amended bill, says that the complainant ought not to have the relief prayed, because his cause of action, if any he has, fully accrued more than four years and more than ten years prior to his filing his bill in this cause. Wherefore his cause of action is barred by the statutes of limitation of Nebraska.

That complainant ought not to have the relief prayed in his amended bill because this respondent is now and has been for more than ten years in actual, open, notarious possession of said land,

and that complainant cannot by filing his bill in equity in this court deprive this respondent of its right to have its case and title tried by a jury in a law court, and that said complainant's bill shows that if he has any cause of action he has a complete remedy at law.

This respondent further says that complainant ought not to
168 have the relief prayed in his amended bill by having the decree of foreclosure of a mortgage given by Augusta Hilton to him, made and entered in the district court of Lancaster Co., Nebraska, which decree appears upon page 243 of Book "A" of the records of said district court, set aside and canceled, because on Oct. 26, 1883, said complainant filed in this court his bill of complaint against this respondent, in which he prayed that said decree be canceled, and such case was heard by this court at the September term, 1885, and complainant's bill by decree of this court, duly made in February, 1886, dismissed at his costs, which decree is a bar to this action.

And this respondent denies all and every and all manner of confederation wherewith it is charged by said amended bill; without this, that there is any other matter, cause, or thing in said amended bill contained material or necessary for this defendant to answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided of denied is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with such its costs in this behalf wrongfully expended and *witnessed*.

M. L. HAYWARD,
Solicitor for Respondent, The Otoe County National Bank.

Attached to said answer is Exhibit "A," in words and figures following, to wit:

Sheriff or Master Commissioner's Deed.

Know all men by these presents that whereas the Otoe County National Bank of Nebraska City, Nebraska, did, by virtue of its judgment of the district court of the second judicial district
169 of the State of Nebraska within and for the county of Lancaster, at the April term thereof, A. D. 1875, recovered a judgment ag'st William C. Lincoln for the sum of five hundred seventy-five dollars fifty cents and costs of same, taxed at twelve dollars & 75 cents; and whereas it was then and there further ordered in said action that in default of the payment of the judgment aforesaid by the said William C. Lincoln that Paren England, as special master commissioner, should cause the lands and tenements hereinafter described to be appraised, advertised, and sold according to law; and whereas, the said William C. Lincoln having made default therein, the said special master commissioner, under and by virtue of the order of the same to him duly directed, did, on the fourteenth day of June, A. D. 1875, at the front entrance to the Academy of

Music, wherein said district court was last held in the city of Lincoln, Lancaster county, in said county of Lancaster (having first giving due and legal notice of the time and place of said sale for not less than thirty days prior thereto in the "Evening Star," a newspaper printed and of general circulation in said county of Lancaster), sell the premises at public auction to the Otoe County National Bank of Nebraska, city — Nebraska, for the sum of three hundred ($300) dollars, which sale was afterwards, at the adjourned April term of said court, A. D. 1875, examined and confirmed, and the said Paren England, as such special master commissioner, was ordered to convey the said premises in fee simple to the said Otoe County National Bank of Nebraska City, Nebraska: Now, therefore, the said special master commissioner as aforesaid, in consideration of the premises and by virtue of the powers vested in me by law, do hereby give, grant, and convey to the said Otoe County National bank, his heirs and assigns, the premises so as aforesaid sold, to wit, the undivided one-third (⅓) of all the following-de-
170 scribed land, to wit, the southwest quarter (¼) of the northwest quarter (¼) (S. W. ¼ of N. W. ¼) and the northwest quarter (¼) of the southwest quarter (¼) (N. W. ¼ of S. W. ¼) of section fourteen (14), in township nine (9), of range six (6) east, 6th P. M., all in said county of Lancaster, with the appurtenances; to have and to hold the same to the said Otoe County National Bank of Nebraska City, Nebraska, its heirs and assigns, and its and their use and behoof forever.

In testimony whereof I have, as such special master commissioner, hereunto set my hand and affixed my seal this 30th day of July, A. D. 1875.

[SEAL.] PAREN ENGLAND,
Special Master Com.

Executed and delivered in presence of—
L. W. BILLINGSLEY.

STATE OF NEBRASKA, }
County of Lancaster, } *ss:*

Personally appeared before me, the undersigned, a notary public commissioned, qualified for, and residing in said county of Lancaster, Paren England, special master commissioner, personally known to me to be the identical person who signed the foregoing deed, and he acknowledged the signing and execution of the said deed — his voluntary act and deed for the purposes therein set forth.

Given under my hand and seal this thirtieth (30) day of July, A. D. 1875.

[NOTARIAL SEAL.] L. W. BILLINGSLEY,
"*Notary Public.*"

On the back is endorsed: "Special masters commissioner's deed. Paren England, special master commissioner, to the Otoe County National Bank of Nebraska City, Nebraska. Dated ——. State of Nebraska, Lancaster county, *ss:* Filed for record July 30th, 1875,

at 10 o'clock 50 minutes a. m., and recorded in the office of
171 the clerk of said county, in Book R of Deeds, on page 61 and 62. Wm. A. Sharrar, county clerk, by I. P. Hebard, deputy."

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117, H. U. S. circuit court, dist. of Nebraska. George H. Hilton *vs.* James E. Jones *et al.* Separate answer — the Otoe County National Bank of Nebraska City, Neb., to amended bill. Refiled Feb. 8, 1886. Elmer D. Frank, clerk. N. L. Hayward, solicitor for respondent, The Otoe County Nat'l B'k.

Thereupon, afterwards, to wit, on the 18th day of February, 1886, answer of Nora M. Lincoln was filed in said case; which said answer is in words and figures following, to wit:

Circuit Court of the United States, District of Nebraska.

GEO. H. HILTON
vs.
JAMES E. JONES *et al.* } In Chancery.

The Separate Answer of Nora M. Lincoln to the Bill of Complaint of George H. Hilton, Complainant.

This defendant, now and hereafter saving to himself all manner and benefit of advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill of complaint, for answer thereunto says she adopts the answer of James F. and Joseph B. Hilton, heretofore filed herein, to said bill by them, through their solicitor, Jonas Hutchinson, and desires that the same may be taken as the answer of this respondent with the same effect as if the same was herein at length set forth, and prays to be hence dismissed with her reasonable costs, &c.

NORA M. LINCOLN,
By JONAS HUTCHINSON,
Her Solicitor.

172 Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117, H. Circuit court of the U. S., dist. of Nebraska. Geo. H. Hilton *vs.* James E. Jones *et al.* Answer of Nora M. Lincoln. Filed Feb. 18, 1886. Elmer D. Frank, clerk. James Hutchinson, 78 Dearborn St., Chicago, sol.

Thereupon, afterwards, to wit, on the 19th day of February, 1886, answer of Jas. E. Jones to amended bill was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

GEORGE H. HILTON, Complainant,
vs.
JAMES E. JONES, JOHN HILTON, THOMAS W. LOWREY, THOMAS P. Smith, William C. Lincoln, James F. Hilton, Joseph B. Hilton, Nora M. Lincoln, Alice B. Ducharme, Augusta Hilton, Smith B. Galey, Jacob Rocke, The State National Bank of Lincoln, Nebraska, Otoe County National Bank of Nebraska City, John M. Young, and August F. J. Schmutte, Respondents.

Answer of James E. Jones to Original Bill in Equity.

Answer of James E. Jones, one of the above-named respondent-, to the amended bill of complaint of George H. Hilton, complainant.

This respondent, now and at all times hereafter saving and reserving unto himself all benefit and advantage of all and all manner of objection and exception which can or may be taken or reserved to the many errors, uncertainties, and other imperfections and insufficiencies in the said complainant's said amended bill of complaint contained, for answer thereto, or unto so much or such parts thereof as this respondent is advised is or are material
173 or necessary for him to make answer unto, this respondent—answering, says:

That he admits that on the 26th day of October, 1861, the said complainant was the owner in fee simple of the said several tracts of land described in said bill of complaint, and that on said day the said complainant made, executed, and delivered to the said John Hilton the deed of conveyance of said lands and every of them in said bill of complaint described and set forth, and that said deed was filed for record in the clerk's office of Lancaster county and recorded therein, as in said bill averred, and that said John Hilton accepted said trusts by endorsement on said deed, as in said bill averred; and your respondent avers that the said John Hilton hath fully performed the said trust and exercised the powers in and by said deed created and granted in manner and form as therein directed and for the benefit of the *cestui que trust*, as by said deed intended, in this, to wit, that on the 16th day of September, 1863, the said John Hilton, acting under and by virtue of the said deed of conveyance and pursuant to the powers therein contained and with the knowledge, consent, and express direction of the said George H. Hilton and of the said George H. Hilton, James F. Hilton, and Joseph B. Hilton, then all and each of them arrived at the years of discretion, and for the purpose of assuring, conserving, and protecting the said interests of said *cestui que trusts*, and for a valuable consideration paid and promised to be paid to him for their benefit by the said Alice B. Hilton, did convey all and every of said lands to the said Alice B. Hilton, now by marriage

Alice B. Ducharme, in manner and form by deed bearing said
174 last-named date as in said bill of complaint averred, and that said deed was duly filed for record and recorded as in said bill of complaint averred.

And this respondent avers that the said Alice B. Ducharne, born Alice B. Hilton, hath fully performed the trusts and exercised the powers by the said last above-mentioned deed of conveyance created and granted in this, to wit, that on the 2nd day of November, 1865, the said Alice B. Ducharne, born Alice B. Hilton, acting under and by virtue of the said several deeds of conveyance and pursuant to the powers therein contained and of the advise, concent, and express direction of the said complainant and of said *cestui que trusts*, and for the purpose of further assuring, protecting, and conserving their interests in said trusts and in said lands, and for a valuable consideration paid and promised to be paid by the said Augusta Hilton for the benefit of said George L. Hilton, James F. Hilton, and Joseph B. Hilton, did convey all and every of said lands to the said Augusta Hilton in manner and form *and* by deed bearing said last-named date, as in said bill of complaint averred, which deed was filed for record and recorded as in said bill averred.

And this respondent further avers that on the 26th day of October, 1861, and simultaneously with the execution of the deed of conveyance by said George H. Hilton to the said John Hilton, in the said bill of complaint first described and set forth, the said George H. Hilton, also by his certain deed of conveyance bearing said last-named date, duly signed, witnessed, and acknowledged and delivered, for a valuable consideration duly granted, bargained, sold,
and conveyed all and every of said lands mentioned in said
175 bill of complaint upon the same trusts expressed in said deed for the benefit of said George L. Hilton, James F. Hilton, and Joseph B. Hilton, as were contained in the said deed by the said George H. Hilton to the said John Hilton, and which said deed granted by express words the same powers to the said Augusta Hilton of and concerning all and every of said lands to grant, sell, and convey the same or any of the same at any time, at her discretion, or in any way or manner, at her discretion, for the benefit of said George L. Hilton, James F. Hilton, and Joseph B. Hilton, as were granted to said John Hilton by the said deed of conveyance in said bill of comp-aint first described.

And this respondent further represesents to your honors that said deed from the said George H. Hilton to the said Augusta Hilton, after the same had been signed, executed, acknowledged, and delivered to the said Augusta as aforesaid, became lost or destroyed and now and for many years hitherto the whereabouts and existence of the same is and has been wholly unknown, and that said deed has never been filed for record in any public office.

And this respondent further represents to your honors that after the making of each and all the several conveyances hereinbefore referred to and the execution and delivery of all and every of the said several conveyances hereinbefore mentioned the said George

H. Hilton, for the purpose of supplying the absence of said deed so executed and delivered by him to the said Augusta Hilton and which had become lost or destroyed as aforesaid, and for the purpose of in all things affirming and perpetuating all and singular the titles, estates, trusts, and powers theretofore created, granted, and aliened by the said several conveyances hereinbefore mentioned in manner and form as hereinbefore set forth, and for the
176 purpose of further assuring and confirming the legal title of all and every of said lands and the said estates and trusts therein in the said Augusta Hilton, and her powers, so as aforesaid created and granted, to grant, bargain, — sell all and every of said lands at any time or in any manner for the benefit of said James F. Hilton, Joseph B. Hilton, and George L. Hilton at her discretion, did, by his deed of conveyance bearing date the 18th day of May, 1866, and on said day made, signed, acknowledged, and delivered to the said Augusta Hilton, in terms grant, bargain, sell, and convey all and every of said lands to the said Augusta Hilton, not, however, upon any trust or trusts, but as of fee, and with full and complete powers to grant, bargain, sell, and convey the same or any of them at any time and in any way without reference to such powers as were created, granted, and conferred as aforesaid by the said former deed of October 26th, 1861, by the said George H. Hilton to the said Augusta; said deed last executed as aforesaid was duly filed for record and recorded in the clerk's office of Lancaster county, Nebraska, on the 30th day of August, 1867, and a copy thereof is hereto annexed, marked Exhibit "A," and made a part thereof.

And this respondent respectfully submits to your honors, under the advice of counsel, that whatever estates, titles, trusts, and powers were created, granted, aliened, or conferred by the said George H. Hilton by his said several deeds of conveyance executed and delivered on the 26th day of October, 1861, were thereby created, aliened, granted, and vested in and to the said John Hilton and Augusta Hilton jointly, and that by operation of law and of the said several mesne conveyances from the said John Hilton to the said Alice B. Ducharme, born Alice B. Hilton, and from the said Alice B.
177 to the said Augusta Hilton, all and every of such title, estates, trusts, and powers became and were, on and before said 18th day of May, 1866, vested in said Augusta Hilton and the said Alice B. Hilton, by marriage Alice B. Ducharm, each and both of them on and before said date became and were wholly divested of all and every part thereof.

And this respondent submits, under the advice of counsel, that all and every of the respondents herein and all persons claiming through or under them or either of them, and especially the said George H. Hilton, are and is by reason of the foregoing facts and circumstances and of said several deeds of conveyance and of right ought to be forever estopped from claiming or asserting that at the date last aforesaid the title to any of said lands or estates were or was in any other person than the said Augusta Hilton.

And this respondent further represents to your honors that the nature, extent, and purposes of the said trusts upon which said lands

were conveyed by the said George H. Hilton to the said John Hilton and Augusta Hilton and which became solely vested in said Augusta Hilton as aforesaid were never declared nor expressed in writing, except by the above-mentioned clause in said deeds, but this respondent avers that at the time said trusts estate was created the said *cestui que trust*, George L. Hilton, James F. Hilton, and Joseph B. Hilton, were infant sons of the said George H. Hilton, and that said trust was, at the time of its creation, intended and orally declared by said George H. Hilton and accepted by the said John Hilton and Augusta Hilton for the purpose of retaining, protecting,
and retaining title to said lands and preserving the same
178 from the creditors of said George H. Hilton, who was then indebted to divers persons in large and sundry amounts and was wholly destitute of other property, in a person of mature years and discretion, capable of dealing with, managing, controlling, granting, bargaining, selling, conveying, and encumbering the same or any portion of the same, at the discretion of said trustee or trustees, during the minority of said *cestui que trust*, for their support, maintenance, and education of each and all of such minors, and to convey to each of said minors, upon his attaining the age of majority, one-third in severalty or an undivided one-third of all and every of such lands as shall remain undisposed of at the date of such majority.

And this respondent further represents to your honors that on the 25th day of August, 1871, the said George L. Hilton had attained the year of his majority and had become entitled to a conveyance in fee simple absolute, according to the terms and conditions and true intent of said trust and the estate and powers of and concerning the same, and said lands so vested in said Augusta Hilton, as aforesaid, to a conveyance of one undivided third part of all and every of said lands; and thereupon, on the day last aforesaid, pursuant to the terms and intent of said trust and by virtue of the powers so vested in her as aforesaid, the said Augusta Hilton did sell and convey to the said George L. Hilton one undivided one-third part of all of said lands by deed of bargain and sale in manner and form as in said bill alleged. To a copy of said deed annexed to said bill of complaint and marked Exhibit "D" this respondent begs leave respectfully to refer.

And this respondent avers that said last-named deed and conveyance was so made as aforesaid by the advice, consent, and
179 procurement of the said complainant, George H. Hilton, for the purpose of vesting in the said George L. Hilton the title in fee simple absolute of said one undivided third of said lands, and that said deed did in terms and in fact so vest the same.

And this respondent further avers that on the 11th day of September, A. D. 1872, the said George L. Hilton, being of mature years and so seized in his own right in fee simple absolute of, in, and to one undivided third part of all and every of said *said* lands, did, by and with the full knowledge, advice, consent, and procurement of the said complainant, and for a valuable consideration to him in hand paid by one Smith B. Galey, respondent herein, by his good and sufficient deed of conveyance, duly executed and delivered,

convey to the said Galey the said undivided one-third part of all and every of said lands; and this respondent avers that said conveyance was for a valuable and fully adequate consideration, and that said deed hath been duly filed for record and recorded in the office of the clerk of Lancaster county.

And this respondent further avers that on the 18th day of September, A. D. 1873, the said Smith B. Galey, being so seized in fee simple in his own right of sa-d undivided one-third part of all and every of said lands as aforesaid, did, for a valuable consideration to him in hand paid by the said William C. Lincoln and with the knowledge, advice, consent, and procurement of the said complainant, George H. Hilton, by his good and sufficient deed of conveyance did grant, bargain, sell, and convey said undivided one-third of all and every of said lands in fee simple to the said William C. Lincoln, which deed was duly signed, witnessed, acknowl-
180 edged, delivered, and filed for record in the office of the clerk, and to a copy thereof annexed to said bill of complaint and marked Exhibit "R" this respondent begs leave to respectfully refer.

And this respondent further represents to your honors that on the 13th day of December, A. D. 1873, the said William C. Lincoln, being vested in fee simple absolute with the title to the said undivided one-third of all and every of said lands as aforesaid, begun an action in the district court of the second judicial district of Nebraska in and for Lancaster county, in which action said Lincoln was plaintiff and the said George H. Hilton and others were defendant-, of which action and all the parties thereto and of the subject-matter thereof said court, being a court of record or original and general jurisdiction, had full and complete jurisdiction to hear, try, and determine the same, and in which action the said Lincoln, as such plaintiff, filed his petition in conformity to the practice of said court, in which he alleged, among other things—the said Lincoln, as such plaintiff, averred that he was, by reason of the said several conveyances hereinbefore set forth, the owner in fee simple absolute of the undivided one-third part aforesaid of all and every of said lands, and in which he averred that the said George H. Hilton claimed or pretended to have some title, claim, lien, or interest in or to said undivided one-third of said lands or a part thereof, and prayed that the said George H. Hilton be required to exhibit such pretended claim, title, or interest, if any he had, and that the same be adjudged void and the said title of the said Lincoln affixed therein; and this respondent avers that thereupon said George H. Hilton and the said George L. Hilton and others of said defendants during the pendency of said action personally appeared in said court, and in writing expressly disclaimed any and
181 all title, claim, lien, or interest, of whatever name or nature, in or to said land- or any of them.

And this respondent further represents that afterwards said cause came on to be heard in said court upon the pleadings and proofs therein, to wit, on the 21st day of January, 1874, that being one of the days of a regular term of said court, and that thereupon, on the

day aforesaid, the said court did, upon being fully advised in the premises, upon consideration thereof, duly find that all and singular the allegations of said petition were true, and upon due consideration did finally adjudge and decree, among other things, that the said William C. Lincoln was the owner in fee simple absolute of said undivided third part of all and every of said lands; and this respondent submits to your honors, under the advice of counsel, that by reason of said several deed- of conveyance and of the said facts and circumstances hereinbefore set forth and narrated and of said decree and the said disclaimer, findings, and proceedings in said action in said district court in and for Lancaster county, Nebraska, the said George H. Hilton and all and every person or persons claiming or to claim through or under him is and are and of right ought to be forever estopped to question or deny that at the date of the rendition of said decree the said William C. Lincoln was the owner in fee simple absolute of the undivided one-third part in and to all and every of said lands, with full right, power, and authority to sell and convey the same, and your respondent avers that said decree at all times has been and now is in full force in said court wholly unimpeached and unappealed from in said district court.

And this respondent further represents to your honors that on the 18th day of March, A. D. 1874, the said William C. Lincoln,
182 being still so seized in fee simple absolute in and to said undivided one-third part of all and every of said lands as aforesaid, with full right, power, and authority to grant, bargain, and sell the same or any of them as aforesaid, did, for a valuable consideration paid to him by this respondent, by his good and sufficient warranty deed bearing said date, duly signed, witnessed, acknowledged, and delivered, grant, bargain, sell, and convey to the respondent the undivided one-third part of all and singular the lands and tenements which are mentioned and described in said deed annexed to the said complainant's said bill of complaint and marked "Exhibit H," to which this respondent begs leave respectfully to refer and to make the same a part hereof.

And this respondent further represents to your honors that afterwards the said William C. Lincoln, being so seized as aforesaid in fee simple absolute, with full power, right, and authority to grant, bargain, sell, and convey the undivided one-third part of all and singular the remainder of said lands, did, on the 20th day of March, 1874, by his good and sufficient deed of conveyance bearing said date, duly signed, witnessed, and acknowledged, for a valuable consideration paid to him by this respondent, grant, bargain, sell, and convey to this respondent one undivided third part of all and singular the land described in said deed, which is annexed to said complainant's said bill of complaint, marked "Exhibit J," to which this respondent begs leave respectfully to refer and to make the same a part hereof.

And this respondent further represents to your honors that immediately upon the execution and delivery to him of the said two

deeds of conveyance last herein before mentioned this re-
183 spondent entered into immediate actual, open, and notarious possession of all and every of the lands in each and both of said last-named deeds mentioned, and thenceforward hitherto until the filing of the said complainant's said bill of complaint hath been in continuous, open, and notarious and undisturbed possession of all and every of said lands and every part thereof as and claiming to be the owner of the same in fee.

And your respondent further avers that since the purchase, by a conveyance to him of said lands as aforesaid, he has made lasting, permanent, and valuable improvements thereon at great cost and expense to this respondent, in good faith, firmly believing and supposing himself to be the absolute and undisputed owner thereof in fee simple absolute.

And this respondent further says that the said complainant ought not to have or maintain his said action against this respondent, because this respondent saith that for more than ten years after the supposed accrual of said complainant's said supposed cause of action in said bill of complaint set forth and before the commencement of this action this respondent had been and still is in a quiet, peaceable, undisturbed, undisputed possession of all and every of said lands, claiming to be the owner thereof in fee simple absolute, and that if said complainant ever had any cause of action against this respondent, as in said bill of complaint averred, the same is now barred by the statutes of limitation of the said State of Nebraska.

And this respondent further insists, under the advice of counsel, that if the said complainant hath any cause of action against
184 this respondent, as his said bill of complaint averred, that the same is not maintainable in this court in equity, but that whatever rights the said plaintiff may have by reason of the premises he is in duty bound to assert the same in an action at law, so that this respondent may be enabled to have the same and this respondent's defense thereto submitted, according to the course of common law, to a jury of said district.

And this respondent denies all and every and all manner of combination and confederation wherewith he is by said complainant's said bill of complaint charged; without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for this respondent to answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided and denied is true to the knowledge or belief of respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HARWOOD, AMES & KELLY,
Solicitors for Respondent James E. Jones.

STATE OF NEBRASKA, }
Lancaster County, } ss:

John H. Ames, being by me first duly sworn, on oath says that

he is one of the duly authorized solicitors and attorneys for the respondent James E. Jones in the above-entitled action named; that said Jones is now absent from the United States of America, and that affiant makes this verification for that reason; that the affiant knows the contents of the foregoing answer, and that the
185 facts, allegations, and averments in said answer contained are, as affiant verily believes, true.

JOHN H. AMES.

Subscribed in my presence and sworn to before me on this 15th day of January, 1884.

A. C. PLATT,
Notary Public.

Warranty Deed.

George H. Hilton & wife to Augusta Hilton. } Filed for record August 30th, A. D. 1867, at 2 o'clock p. m. S. B. Gaily.

Know all men that George H. Hilton and Honora Hilton, his wife, of Cincinnati, Ohio, in consideration of $1.00 (one dollar), and maternal love and affection, to them paid by Augusta Hilton, of the same place, the receipt — is hereby acknowledged, do hereby bargain, sell, and convey to the said Augusta Hilton, her heirs and assigns forever, the following real estate, to wit, situated in the Territory of Nebraska, in Lancaster county: The northwest quarter of the northwest quarter, sec. 3, 7, 7; N. E. ¼ N. E. ¼, 4, 7, 7; S. E. ¼ S. E. ¼, 33, 8, 7; S. W. ¼ S. W. ¼, 34, 8, 7; W. ½ S. E. ¼, 30, 8, 7; S. W. ¼ N. E. ¼, 30, 8, 7; S. W. ¼ N. W. ¼ and N. W. ¼ S. W. ½, 14, 9, 6; N. E. ¼ S. E. ¼, 15, 9, 6; W. ½ and S. E. ¼ N. E. ¼, 29, 8, 7; S. W. ¼, sec. 11, 9, 6; S. W. ¼, 2, 9, 6; S. ½ N. W. ¼, 14, 10, 6; S. E. ¼ N. E. ¼, 15, 10, 6; N. E. ¼ N. E. ¼, 11, 9, 6; S. E. ¼ N. W. ¼, sec. 19, & E. ½ S. W. ¼, 19, & S. W. ¼ S. E. ¼, sec. 19, town. 8, range 7, and N. W. ¼ of sec. 18, 8, 7; E. ½ S. E. ¼, sec. 1, 8, 6; N. E. ¼ N. E. ¼, 12, 8, 6; N. W. ¼ S. W. ¼ and E. ½ N. W. ¼, sec. 6, 8, 7; the N. E. ¼, 6, 8, 7; S. E. ¼, 2, 9, 6; S. E. ¼, 11, 9, 6; W. ½ N. E. ¼, 11, 9, 6.

This deed is made to perfect the title in Augusta Hilton, as it appears that the deed made by above grantors dated 26th
186 October, 1861, through which title to said lands vested in her, has not been recorded and has been mislaid or lost, together with all the privileges and appurtenances to the same belonging; to have and to hold the same to the said Augusta Hilton, her heirs and assigns forever; and the said grantor-, for themselves and their heirs, do hereby covenaht with said grantee, her heirs and assigns, that they are lawfully seized of the premises aforesaid; that the premises are clear from all incumbrance whatever, and that — will forever warrant and defend the same, with the appurtenances, unto the said grantee, her heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof the said George H. Hilton and Honora Hilton, his wife, who hereby releases her rights of dower in said prem-

ises, hereunto set their hands and seals this 18th day of May, in the year eighteen hundred and eighty-six.

[U. S. revenue stamp, $1.00.]

GEORGE H. HILTON. [SEAL.]
HONORA HILTON. [SEAL.]

Signed, sealed, and acknowledged in presence of—
W. R. McCARTY.
N. F. CAIN.

STATE OF OHIO, }
Hamilton County, } *ss.:*

Be it remembered that on this 18th day of May, in the year of our Lord one thousand eight hundred and sixty-six, before me, the subscriber, a notary public in and for said county, personally came George H. Hilton and Honora Hilton, his wife, the grantors in the above conveyance, and acknowledged the signing and sealing thereof to be their voluntary act and deed for the uses and purposes therein mentioned; and the said Honora Hilton, wife of the said George H. Hilton, being at the same time examined by
187 me separately and apart from her husband and the contents of the said deed being by me made known and explained to her, then declared that she did voluntar-y sign, seal, and acknowledge the same, and that she is still satisfied therewith as her act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

[L. S.] W. R. McCARTY,
Notary Public, Hamilton County, Ohio.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117, H. George H. Hilton *vs.* James E. Jones *et al.* Answer of Jas. E. Jones to amended bill. Filed Feb. 19, 1886. Elmer D. Frank, clerk. Harwood, Ames & Kelly, solicitor- for Jones.

Thereupon, afterwards, at the January term of said court, on the 20th day of April, 1886, the following proceedings were had and done in said cause, as appears of record on folio 98, Journal "L," of said court, to wit:

GEORGE H. HILTON }
vs. } 117, H.
JOHN HILTON *et al.* }

On motion, leave is granted by the court to file replication herein instanter, but not to affect time to take proofs under former order.

Thereupon, afterwards, to wit, on the said 20th day of April, 1886, replication was filed in said case; which said replication is in words and figures following, to wit:

188 In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

GEO. H. HILTON
vs.
J. B. HILTON *et al.* } No. 117, H.

The replication of Geo. H. Hilton, plaintiff, to the answer of James E. Jones and others, defendants.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that *they* will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants *are* uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by his said bill of complaint he has already prayed.

JOHN S. GREGORY,
Solicitor for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 117, doc. H. U. S. circuit court, district of Nebraska. In equity. Geo. H. Hilton *vs.* Jos. B. Hilton *et al.* Replication. Filed April 20, 1886. Elmer D. Frank, clerk. John S. Gregory, solicitor for plaintiff.

189 Thereupon, afterwards, to wit, on the 8th day of November, 1886, answers were filed in said case; which said answers are in words and figures following, to wit:

Answer of Aug. J. F. Schmutte.

In the Circuit Court of the United States, District of Nebraska.

GEORGE H. HILTON
vs.
AUGUST F. J. SCHMUTTE *et al.* } 117, H.

Separate answer of defendant August F. J. Schmutte to the amended bill of complaint of George H. Hilton, complainant.

This defendant, now and at all times hereafter saving *saving* and reserving unto himself all benefit or advantage that can or may be taken to the many errors, uncertainties, and other imperfections in

the said amended bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised is necessary or material for him to make answer unto, answering, says—

That it is true that on the 24th day of August, 1874, the defendant William C. Lincoln and Nora M., his wife, by a good and sufficient deed and for a valuable consideration, not only assumed and pretended to convey but actually did convey to Thomas P. Smith, of Cook county, Illinois, the west half of the southeast and the southwest quarter of the northeast quarter of section 30, town. 8, range 7 east, in Lancaster county, Nebraska, and duly executed a deed therefor to said Smith in consideration of the sum of $2,000, by said Smith actually paid to said Lincoln, which said deed was on the 7th day of September, 1874, filed for record in the office of the county clerk of said Lancaster county, and was recorded in
190 Book "O" of Deeds Records, at page 611.

That afterwards and on or about the 23rd of May, 1879, the said Smith, in consideration of the sum of $840 to him paid by Thomas Pray, by his deed conveyed to said Thomas Pray the west half of the southeast quarter and the southwest quarter of the northeast quarter of said section 30, town. 8, range 7.

That afterwards and on or about the 28th day of December, 1880, the said Thomas Pray, in consideration of the sum of $5,000 to him paid by this defendant—the said Pray by his deed conveyed to this defendant said last above described premises.

This defendant alleges the fact to be that said Lincoln was the owner of said lands so by him conveyed to said Smith and of the undivided one-third thereof which this complainant now seeks to recover, and that neither the said Smith nor the said Pray nor this defendant had any notice, information, or knowledge of the said pretended trust deeds set forth in the bill of complaint; that the said Smith and also the said Pray and this defendant were innocent purchasers of said premises in good faith and each paid for said premises their full value without any notice of knowledge of any right or pretended rights of the complainant in or to said land or any part thereof.

This defendant avers the fact to be that by the several conveyances set forth in the bill of complaint the said George L. Hilton, who had arrived at his majority prior to the conveyance to him from said Augusta of the undivided one-third of the said premises which complainant seeks to recover in this action—the said George L. became the owner in fee of the said one-third so conveyed to him by said Augusta, and that by said deed he received the same in fee
191 as the owner thereof and not merely a life estate therein, but said George L. had full power and authority to convey the same.

That said George L., in his lifetime, for a valuable consideration, recited in said deed, conveyed said undivided one-third to the said Lincoln, the grantor of said Smith.

That after the conveyance by said George L. to said Lincoln of said undivided one-third of said premises, including the one-third which the complainant seeks to recover in this suit, and before the

conveyance of said premises to said Smith and while said Lincoln held the title to said premises, he, the said Lincoln, commenced in the district court of Lancaster county, Nebraska, an action against the complainant in this action, George H. Hilton, and others, setting forth in his petition that he was the owner in fee of the said undivided one-third of said premises so conveyed to him by said George L., with other lands, including the other undivided two-thirds which he alleged he held in trust for the defendants James F. and Joseph B. Hilton, and setting forth that said complainant herein claimed some interest in said premises, and praying, among other things, that it might be decreed that he was the owner in fee of said undivided one-third so conveyed to him by said George L.; that said complainant herein, George H., duly appeared in said action by his counsel and had actual knowledge of the said action.

That in said action the said George H., complainant herein, filed a disclaimer of all interest in and to said premises in controversy in said action, which premises includes the premises and interest which said complainant seeks to recover in this action.

192 That upon a trial of said action had in said district court of said Lancaster county it was by the court decreed that said Lincoln was the owner in fee of said undivided one-third which had been conveyed to him by said George L.; that said judgment and decree of said district court was rendered on the 21st day of January, 1874; that said judgment and decree is still in full force and effect and has never been appealed from or reversed; that the complainant in this action has never at any time appealed from said decree, although he was a party to said action and had actual knowledge of the pendency thereof.

A certified copy of said decree is filed with and made a part of this answer as well as a part of the answer of the said defendant, Thos. W. Lowrey.

That immediately upon the execution of said deed from said Lincoln to said Smith, said Smith took possession of said premises so conveyed, and he and his grantees have ever since been in the exclusive, open, and notorious possession thereof, and have ever since claimed to be and in fact have been the owners thereof.

That this defendant and his grantors have ever since said conveyance from said Lincoln to said Smith paid the taxes on said lands and have put lasting and valuable improvements on said premises.

This defendant avers that said district court had full and complete jurisdiction to render said decree and to hear and determine said action and complete jurisdiction of the persons and parties to said action.

This defendant avers that the said several conveyances com-
plained of in bill of complaint from said John to Alice,
193 and from said Alice to Augusta, and from said Augusta to said George L., and from said George L. to said Lincoln were each made with the full knowledge and consent of said complainant and with his procurement. This defendant denies that the Exhibit "B" attached to the petition of said Lincoln, referred to *the*

in the bill of complaint, was false generally or in particular or false at all, and denies that it was conceived in sin or brought forth in iniquity to deceive said court or to defraud any person whomsoever; denies that the appearance and action of the said Seth Robinson, as attorney, as in the bill of complaint alleged, was fraudulent, or was a fraud upon the court or upon the right of the complainant or any person whomsoever, and defendant alleges that said Robinson was employed by the several parties and persons for whom he appeared in said action in good faith to take the action which he did take, and his action in the matter and suit was with the full knowledge and consent and at the request of all of said parties to said action for whom he did appear. This defendant denies each and every allegation of fraud and collusion in said bill of complaint contained.

This defendant, further answering, says that on the 9th day of September, 1872, the county treasurer of said Lancaster county, at his office, in the city of Lincoln, under and by virtue of the laws of Nebraska and in conformity to and with such laws, sold to R. R. Tingley, at tax sale, at public auction, the said west half of the southeast quarter of section 30 aforesaid for taxes and interest thereon for the year 1871, duly and legally levied on said land.

Said land was subject to taxation for said year 1871 and was duly and legally assessed for taxation, and at the time of said tax
194 sale the taxes on said land for the year 1871 had not been paid and said lands were advertised for sale according to law.

That afterwards and on the 2d day of March, 1875, the said Tingley presented to the treasurer of said county his certificate of purchase for said lands showing such sale and demanded of said treasurer a tax deed for said land, and, said land not having been redeemed from such tax sale, the said treasurer did, on or about the day last aforesaid, by his deed conveyed to said Tingley said last above-described lands, which tax deed was duly and legally made — executed in compliance with the laws of Nebraska.

That afterwards and on or about the 31st of December, 1875, said Tingley, by his deed, in consideration of the sum of $—— to him paid by Thos. P. Smith aforesaid, conveyed said premises to said Smith; that said tax deed was filed for record on or about the day of its execution, in the office of the county clerk of said Lancaster county, and was duly recorded.

This defendant further says that on the 9th day of September, 1872, the treasurer of said Lancaster county, at his office, in the city of Lincoln, under and by virtue of the laws of Nebraska and in conformity therewith, sold to S. F. Shaw, trustee, at public auction, at tax sale, the southwest quarter of said section 30 for taxes, interest, and charges for the year 1871, duly and legally levied and assessed; said land was subject to taxation for the year 1871, and the same had been assessed and taxes levied thereon, which taxes had not been paid at the time of said sale; said lands were advertised for sale as required by law. On the 7th day of November, 1874, the said S. F. Shaw, trustee, presented to the treasurer of said county,

at his office, in said county, said certificate of purchase show-
195 ing the sale of said premises to him at such tax sale and demanded from said treasurer a deed from said treasurer for said premises, and, said premises never having been redeemed from such tax sale, said treasurer did, on or about the date last aforesaid, by his tax deed convey said premises to said S. F. Shaw, trustee, which deed was made in compliance with and conformity to the laws of Nebraska, and was on or about the same day filed for record in the office of the county clerk of said county and was recorded.

That afterwards and on or about the 11th day of August, 1877, the said S. F. Shaw, trustee, by his deed of that date, in consideration of the sum of $—— to him paid by the said Thomas P. Smith aforesaid, conveyed said premises to said Smith, the grantor of said Pray. No action has ever been brought to cancel or set aside said tax deeds or either of them, and this defendant and his grantors have for more than ten years last past been in the open, notorious, and exclusive possession of said premises.

This defendant submits, under advice of counsel, that if the said complainant ever had any cause of action against this defendant the same has long been barred by the statutes of limitations of the State of Nebraska.

And defendant further submits that if the said complainant has any case of action against this defendant, as in his bill averred, the same is not maintainable in this court in equity; but that if said complainant has any rights in or to the premises in question he is bound to assert them in a court of law so that this defendant may be enabled to have the same and the defense of this defendant submitted to a jury.

196 This defendant avers that he is a *bona fide* purchaser of said premises, which complainant now seeks to recover in this action, and that he paid full value therefor without any knowledge, notice, or information of any right or pretended right of the complainant therein.

This defendant denies all and every and all manner of unlawful combination and confederacy wherewith he is — and by said bill of complaint charged; with- this, there is any other matter or thing in the bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied is true to the knowledge and belief of this defendant; all of which things this defendant is ready and willing to maintain and aver and prove as this honorable court shall direct, and this defendant prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

MASON & WHEDON,
Solicitors for Defendant Schmutte.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117, H. George H. Hilton *vs.* Aug. J. F. Schmutte *et al.* Answer of Schmutte. Filed Nov. 8, 1886. Elmer D. Frank, clerk.

Answer of Thos. W. Lowrey.

In the Circuit Court of the United States, District of Nebraska.

GEORGE H. HILTON
vs.
THOMAS W. LOWREY *et al.* } No. 117, H.

Separate answer of Thomas W. Lowrey to the amended bill of complaint of George H. Hilton, complainant.

197 This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception that can or may be taken to the many errors, uncertainties, and other imperfections in said amended bill of complaint contained, for answer thereto or to so much thereof as this defendant is advised is necessary for him to make answer unto, this defendant, answering, says—

That it is true that on the 19th day of March, 1874, the said William C. Lincoln and Nora, his wife, by a good and sufficient warranty deed and for valuable consideration, not only assumed to convey but did actually convey to this defendant the northwest quarter of the northwest quarter of section 3 and the northeast quarter of the northeast quarter of section 4, in township 7, range 7 east, in Lancaster county, Nebraska, and also the southeast quarter of the southeast quarter of section 33 and the southwest quarter of the southwest quarter of section 34, in township 8, range 7, in said county; also the northwest quarter — 18, in township 8, range 7, all of the said lands being in said Lancaster county, Nebraska. This defendant purchased said lands with other lands from said Lincoln in good faith and for a valuable consideration and without any notice or knowledge of any trust in or to said John Hilton or any other person or persons whomsoever and without any notice or knowledge of any claim or pretended claim of the complainant or any of the defendants in or to said premises and without any notice or knowledge of any pretended defects in the title to said premises.

This defendant denies that the said George L. Hilton had only a life estate in and to said premises or in and to an undivided one-third thereof, but this defendant alleges the fact to be that

198 the said George L. Hilton was the absolute owner of and undivided one-third of said premises described in the bill of complaint and of the lands herein described, which said lands so owned by said George L. had been, before the conveyance to this defendant by said George L. for a valuable consideration, conveyed to the grantor of this defendant; that at the time of the conveyance from the said George L. to the grantor of the defendant the said George L. was upwards of 21 years of age, and was the absolute owner of an undivided one-third of said lands, and had full power and authority to sell and convey the same, and did during his lifetime convey all his interest in and to said lands to the said Lincoln, the grantor of this defendant.

This defendant, further answering, says that if any trust was ever reposed in the said John Hilton the same has heretofore been fully executed by him; that after said lands were conveyed to him, as in the bill of complaint alleged, the said John, for the benefit of the said George L., James F., and Joseph B., conveyed said lands to his neice, the said Alice Ducharme, then Alice Hilton, who was the daughter of the said complainant; that afterwards the said Alice conveyed said lands to the said Augusta, who was the sister of the said Alice and the sister of the said George L., Joseph B., and James F. Hilton; that said conveyance to said Augusta from said Alice was made on or about the 22nd day of November, 1865.

That on or about the 26th of August, 1871, the said Augusta by her deed of that date conveyed to the said George L. in fee and undivided one-third of the lands in controversy in this action, and also other lands, and on the same day conveyed to said George L.
199 in trust for the defendants James F. and Joseph B. Hilton an undivided two-thirds of the lands in controversy in this action with other lands; that on or about the 11th day of September, 1872, the said George L. by his deed of general warranty conveyed to one Smith B. Galey, defendant herein, the lands in controversy in this action with other lands; that afterwards and on the 18th day of September, 1883, the said Smith B. Galey and the said George L. by their deed of that date conveyed to William C. Lincoln, defendant herein, the lands in controversy in this action with other lands, and thereby and by such conveyance the said Lincoln became the owner in fee of the lands in controversy in this action.

That on said 18th day of September, 1873, the said Smith B. Galey, who by prior conveyances had become the owner and held the title to the other undivided two-thirds of said land described in the bill of complaint, conveyed said undivided two-thirds to the said Lincoln in trust for the benefit of the defendents James F. and Joseph B. Hilton, which said last-mentioned deed was made in conformity to a decree rendered in the district court of Lancaster county, Nebraska, on the 4th day of November, 1873, in an action then in said court pending, wherein the defendants herein, James F. and Joseph B. Hilton, were plaintiffs, by their next friend, William W. Dunham, and the said John Hilton, Alice B. Ducharme, Alfred Ducharme, Augusta Hilton, Smith B. Galey and wife were defendants, a certified copy of which decree will be produced on the hearing of this case, said decree being found on page 182 of Journal "B" of the district court records of said Lancaster county, and a certified copy of said decree being attached to the answer of this defendant in the case of James F. Hilton and Joseph B. Hilton against this defendant, now pending in this court, said case being No. 270, I, reference to said certified copy being here had and said
200 copy being made a part of this answer; that after the said conveyance from the said Galey and George L. to said Lincoln, and after the said conveyance from said Galey alone to said Lincoln, said Lincoln commenced in the district court of Lancaster

county, Nebraska, an action against the complainant herein, George H. Hilton, the defendants James F. and Joseph B. Hilton, and others, setting forth in his petition, among other things, that he, the said Lincoln, was the owner in fee of an undivided one-third of the premises in controversy in this action, and that he held the title to the other undivided two thirds in trust for the defendants in that action, James F. and Joseph B. Hilton; that in said action said complainant herein was served with process, and had actual knowledge of the pendency of said action, and appeared therein in person and by counsel, and thereupon a trial in said action was had, and it was, among other things, by said court decreed that the said Lincoln was the owner in fee of the premises which the plaintiff in this action seeks to recover with other premises; that a copy of said decree duly certified is herewith filed, marked "A," and made a part of this answer. Said decree has never been appealed from, set aside, or reversed, but is still in full force.

That it was after said decree that the said Lincoln conveyed to this defendant the premises which the complainant now seeks in this action to recover; that the said conveyance from the said Lincoln to this plaintiff was made on the 19th day of March, 1874, for full value of said lands paid by this defendant, and immediately upon the execution of said deed and the conveyance of said premises to this defendant this defendant took possession of said premises and has ever since remained in the open, notorious, and ex-
201 clusive possession of said premises which the complainant seeks to recover from this defendant, and at and during all such time since said conveyance this defendant has been in the possession of said premises, claiming to be the owner of the same.

And since said conveyance this defendant has paid the taxes on said premises and placed lasting and valuable improvements on said premises; that complainant has never offered to pay said taxes or any part thereof or to pay for said improvements.

This defendant further avers that the said district court of said Lancaster county which rendered said decree aforesaid had full and complete jurisdiction to hear said cause and full and complete jurisdiction of the persons and parties to said several actions and of the subject-matter of said suits.

That in said action hereinbefore referred to, wherein the said Lincoln was plaintiff and the said complainant herein, George H. Hilton, and others were defendants, one of the issues presented in said action and which was heard and determined by said court was that said Lincoln was the owner in fee of the premises which the said plaintiff herein now seeks to recover in this action, which issue said court determined in favor of said Lincoln, the grantor of this defendant; that in said action the several conveyances set forth in the bill of complaint were drawn in question, and upon the hearing of said cause said court decided that said Lincoln was the owner in fee of the premises which this complainant now seeks to recover.

This defendant alleges the fact to be that all the several deeds referred to in the bill of complaint down to and including the

202 deed from said George L. and said Galey to said Lincoln were made with the knowledge and consent of the complainant herein.

This defendant denies that the exhibit attached to the petition of said Lincoln referred to in the bill of complaint was false in general or in particular, and denies that the same — made corruptly or collusively with any person whomsoever. This defendant denies that the appearance of said Robinson as attorney for said George H. Hilton, Alice B. Ducharme, Augusta Hilton, or any of them or for any of the parties for whom he appeared in said action was collusive or fraudulent, and denies that the action of said Robinson in the premises was fraudulent as to any person whomsoever. This defendant avers that the allegation in the bill of complaint that said complainant never employed said Robinson to appear for him in said action, and that said complainant had no knowledge of the commencement of said action referred to in said complaint, is untrue, and defendant denies each allegation in the complaint in reference thereto. This defendant avers that the statement contained in the bill of complaint that the said Mrs. Ducharme and Augusta Hilton had no information or knowledge of the commencement of said suit or of the appearance of said Robinson is false and untrue, and defendant alleges that said Robinson was employed by all the parties for whom he appeared in said action to appear therein and to take the action in said case which he did take therein; that the action of said Robinson in said action was with full knowledge of all persons for whom he appeared, and his action in the matter was well known to the complainant in this action, who employed said Robinson to appear in said action.

This defendant, under advice of counsel, insists that if the said complainant has any cause of action against this defendant, as in his bill of complaint averred, the same is not maintainable in
203 this court in equity, but that if said complainant has any rights in or to the premises in question he is duty bound to assert the same in a court of law, so that this defendant may be enabled to have the same and this defendant's defense thereto submitted to a jury of this district according to the course of common law.

And this defendant denies all and every and all manner of combination and confederacy wherewith he is in and by said bill of complaint charged; without this, that there is any other matter or thing in the bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided and denied is true, to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to maintain, aver, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MASON & WHEDON,
Attorneys for Lowrey.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 117, H. Geo. H. Hilton *vs.* Thos. W. Lowrey *et al.* Answer of Lowrey. Filed Nov. 8, 1886. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 9th day of November, 1886, proof on part of defendants Lowrey & Schmutte was filed in said case; which said proof is in words and figures following, to wit:

WILLIAM C. LINCOLN
vs.
JAMES F. HILTON, JOSEPH B. HILTON, Infants under the Age of Twenty-one Years, by Seth Robinson, Their Guardian *ad Litem*: George H. Hilton, Alice B. Ducharme, Augusta Hilton, Nora M. Lincoln, & George L. Hilton.

204 And now comes the parties, by their attorneys, and all of the defendants except the infants having filed a disclaimer of all interests in the subject-matter of the action, and the infants, by Seth Robinson, Esq., their guardian *ad litem*, having answered, this cause came on to be heard on the petition and answer of said infants, and the court, after hearing the evidence offered and the agreements of counsel, do find that the plaintiff holds the legal title to an undivided two-thirds of the following-described lands, to wit:

Description.	Section.	Township.	Range.	Acres.
S ½ of n w ¼	14	10	6	80
S e ¼ of n e ¼	15	10	6	40
S w ¼, except 40 acr's s'd	2	9	6	120
S e ¼, " 20 "	2	9	6	140
S w ¼ & s e ¼	11	9	6	320
W ½ n e ¼	11	9	6	80
S w ¼ of n w ¼	14	9	6	40
N w ¼ of s w ¼	14	9	6	40
N e ¼ of s e ¼	15	9	6	40
N e ¼	6	8	7	164.29
E ½ of n w ¼ & n e ¼ of s w ¼	6	8	7	122.63
N w ¼	18	8	7	153.60
S e ¼ n w ¼ / E ½ of s w ¼ & s w ¼ of s e ¼	19	8	7	160
W ½ of n e ¼ & s e ¼ of n e ¼	29	8	7	120
W ½ of s e ¼ & s w ¼ of n e ¼	30	8	7	120
N w ¼ of n w ¼	3	7	7	
N e ¼ of n e ¼	4	7	7	164.40
S e ¼ of s e ¼	33	8	7	
S w ¼ of s w ¼	34	8	7	
				1,904.92

in trust for the infants above named, and that he is the owner in fee of the other undivided one-third of the same; that the infants have no other property except their necessary wearing apparel, and that no revenue whatever is derived from the real estate above described; that the father of said infants is a man of but small means and is unable to provide for their support, education, and maintainance; that the plaintiff has already paid out for necessaries
205 for said infants the sum of $698.00, as follows: For James F. Hilton, $275.00, and for Joseph B. Hilton, $423.00; that the plaintiff has paid a certain mortgage or incumbrance on a portion of said premises in favor of the Otoe County National bank amounting to the sum of $1,683.00.

That the plaintiff has necessarily paid, laid out and expended in prosecuting, defending, compromising, and settling various suits, wherein the title to said lands was in controversy, the sum of $3,308.00.

That the taxes now due and unpaid on the undivided two-thirds of said premises held by the plaintiff in trust for said infants as aforesaid amount to the sum of $1,420.00.

That it is for the best interest of the infants that a portion of said lands be sold or mortgaged to raise money to pay said taxes and discharge said indebtedness and to provide means for their future support, education, and maintainance.

It is therefore ordered, adjudged, and decreed that the plaintiff, William C. Lincoln, be, and he hereby is, authorized and empowered to sell not to exceed one-half of the real estate above described to such person or persons, at such times, and on such terms as shall, in the opinion of said Lincoln, be — the best interest of said infants, provided the same can, in the opinion of said Lincoln, be sold at its fair value; and in case the same cannot be sold for its fair value, then and in that case he is hereby authorized and empowered to negotiate a loan of not to exceed ten thousand dollars, at a rate of interest not to exceed 12 per cent. per annum, and mortgage not to exceed one-half of the property above described to secure the payment of the same.

And it is further ordered, adjudged, and decreed that before
206 the said William C. Lincoln shall sell or mortgage any portion of the property above described he shall first execute a bond to James F. Hilton and Joseph B. Hilton in the sum of five thousand dollars, with good and sufficient surety or sureties, to be approved by the clerk of this court, conditioned that he will honestly and faithfully perform the trust reposed in him in reference to making such sales or loan; that he will pay over, invest, and account for all moneys that shall be received by him by virtue of said trust, according to the order of any court having authority to give direction in the premises, and that he will in all things observe the orders and directions of the court in relation to such, and upon compliance with such conditions the bond shall be void and not otherwise, and file the same in the county clerk's office of Lancaster county.

And it is further ordered, adjudged, and decreed that out of the moneys arising from such sale or loan the said Lincoln shall pay—

First. The costs and expenses of this proceeding.

Second. The taxes now due on said lands.

Third. He shall retain for his own use and benefit the moneys expended by him for said infants and two-thirds of all the moneys paid, laid out, and expended by him to discharge the mortgage to the Otoe County National bank and in prosecuting, defending, compromising, and settling all suits wherein the title to the lands or any part thereof have been in controversy, with interest at the rate of 12 per cent. per annum from the date of such judgment.

Fourth. The balance of said moneys shall be invested in good and safe securities, at a rate of interest not less than ten per cent. per annum, except such portions as may be necessary for the immediate support, education, and maintainance of said infants.

207 STATE OF NEBRASKA, } ss:
Lancaster County, }

I, R. O. Phillips, clerk of the district court, do hereby certify that the above and foregoing is a true and correct copy of the order of the court in said cause, which appears of record in Court Journal "B," at pages 297 to 299.

In testimony whereof I have hereunto set my hand and the seal of said court, at Lincoln, in said county, this 9th day of February, A. D. 1874.

[SEAL.] R. O. PHILLIPS, *Clk D. C.*,
By J. P. HEBARD, *Deputy.*

Upon the back of said proof appear endorsements in words and figures following, to wit: No. 117, H. Wm. C. Lincoln *vs.* James F. Hilton. Decree. Certified copy referred to in answers of Lowrey & Schmutte to amended bill. Geo. H. Hilton *vs.* T. W. Lowry *et al.* Proof on part of def'ts Lowrey and Schmutte. Filed Nov. 9, 1886. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 12th day of December, 1886, depositions were filed in said case; which said depositions are in words and figures following, to wit:

Notice to Take Deposition-.

In the District Court of the 2nd Judicial District of Nebraska in and for Lancaster Co.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

GEORGE L. HILTON & JAMES F. HILTON and JOSEPH B. HILTON, Infants under the Age of 21 Years, by Wm. W. Dunham, Their Next Friend, Plaintiffs,

vs.

JOHN HILTON, ALICE B. DUCHARME and ALFRED DU-
208 charme, Her Husband; Augusta Hilton, George H. Hilton, The Otoe County National Bank of Nebraska City, and Samuel McClay, Sheriff of Lancaster County, Defendants.

The above-named plaintiffs will take notice that on Friday, the 18th day of April, A. D. 1873, The Otoe County National Bank will take the deposition- of sundry witnesses, to be filed as evidence on the trial of the above-entitled cause, at the office of John Leonard, attorney, in the town of Winterset, county of Madison, in the State of Iowa, between the hours of 8 a. m. and 4 p. m. of said day, and that the taking of said depositions will — adjourned from day to day between the same hours until they are completed.

SETH ROBINSON,
Of Counsel for Otoe Co. Nat. Bank.

Received copy of the above notice this 4th day of April, A. D. 1873.

E. E. BROWN,
Attorney for Plaintiffs.

In the District Court of the 2nd Judicial District of Nebraska in and for Lancaster County.

GEORGE L. HILTON and JAMES F. HILTON, JOSEPH B. HILTON, Infants under the Age of 21 years, by Wm. W. Dunham, Their Next Friend, Plaintiffs,

vs.

JOHN HILTON, ALICE B. DUCHARME and ALFRED DUCHARME, Her Husband; Augusta Hilton, George H. Hilton, The Otoe County National Bank of Nebraska City, and Samuel McClay, Sheriff of Lancaster County, Defendants.

THE STATE OF IOWA, } ss:
Madison County, }

Deposition of John Hilton, taken before me, Byram Leonard, a notary public in and for the county of Madison, in said State, on the 18th day of April, A. D. 1873, between the hours of 10 a. m. and
209 — p. m., at the office of John Leonard, in the city of Winterset, county of Madison, pursuant to the annexed notice,

to be read in evidence on behalf of the said Otoe County National Bank, one of the said respondents in an action pending in the district court of the 2nd judicial district of Nebraska in and for Lancaster county, in which George L. Hilton *et al.* are plaintiffs and John Hilton *et al.* are defendants.

JOHN HILTON, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and saith as follows, viz:

Ques. 1. State your name, age, occupation, and place of residence.

Ans. John Hilton; age, 54 years; farmer & bricklayer; Madison county, Iowa.

Ques. 2. State if you are a defendant in the action and if you are acquainted with these parties, plaintiff- and defendants, and what relation of kinship you bear to the defendant-, if any, and what to the plaintiffs.

Ans. I am a defendant in this action and am acquainted with the minors, the plaintiffs, and by reputation am acquainted with the defendants; I am an uncle to the minors, plaintiffs, and also an uncle to Mrs. Ducharme.

Ques. 3. State if you are a brother of George H. Hilton, one of the defendants in this case.

Ans. I am.

Ques. 4. Where did you reside on the 26th day of October, 1861, and for how long prior to that time had you resided there and for how long since?

Ans. I resided in Madison county, the State of Iowa, at that time and had resided there since August of the same year. I removed from here into Clarke county, of this State, in the year 1864, and remained there one year, and since that time have been living in this county.

Ques. 5. When did your brother George H. Hilton reside
210 on the 25th day of October, 1861, and for how long prior had he resided there, and for how long since?

Ans. He resided in the city of Cincinnati, in the State of Ohio, at that time, and had resided there since 1836 or 1837, and remained there until the spring of 1872.

Ques. 6. State if you were acquainted with Honora, deceased, wife of the said George H.

Ans. Yes, sir.

Ques. 7. On the 26th day of October, 1861, how long had it been since you saw the said George H. to converse with him, and how long a time elapsed after that day before you saw him again to converse with him?

Ans. I think he was out here in the spring of 1861, when I saw him to converse with him. I don't think I again saw him after that time until the year 1863 to converse with him.

Ques. 8. State if about that time the said George H. made a deed conveying or purporting to convey to you certain lands; and, if you know, state generally where the lands lay.

Ans. In the fall of 1861 he conveyed to me his lands situated

along Salt creek from Lincoln up ten or twelve miles in the State of Nebraska.

—. About how many acres of those lands were there?

Ans. I think there was about eighteen hundred or two thousand acres.

—. In what county or counties were they situate?

Ans. In Lancaster county, & it may be in other counties; I cannot say; my knowledge is derived from having located for him land warrants to the amount of 1,000 or 1,200 acres.

Ques. 9. State if you ever signed any acceptance of the trust mentioned in said deed.

Ans. I did.

211 Ques. 10. If you say yea to the last question, then state where you signed such acceptance, and when and in whose presence.

Ans. I signed it after I received the deed from George H. I think some time in the fall of 1861. The acceptance was made, I think, at my home, in Madison county, Iowa; I don't remember that any person was present. The acceptance was written on the back of the deed and I signed them.

Ques. 11. State if prior to the signing of such acceptance you had any conversation with said George concerning the deed or the acceptance of the lands mentioned in the deed or concerning the transaction generally.

Ans. Yes; of course I had.

Ques. 12. If you say yea to the last question, state fully what those conversations were, giving times, place, and parties present.

Ans. The only conversation I had with my brother, and I don't remember now whether it was a conversation or a correspondence, was when I located the warrants in 1858 or 1859, I think. When I located the warrants I wrote to my brother that I did not think the lands would be of any value and advised him not to purchase any more out there, as there was no future to the country. I recollect this single instance, but cannot recollect no other conversation or correspondence about it, and so don't recollect the parties present.

Ques. 13. State particularly what the said George stated was to be his purpose and motive in making said deed.

Ans. I don't recollect that he mentioned any motive, only that he wanted the boys to have the lands, and I was acquainted with the lands, and was then talking about moving there myself and could see to his lands and sell for the boys.

Ques. 13½. Who do you mean in the preceding answer by

212 the boys?

Ans. George L. Hilton, James F. Hilton, & Joseph B. Hilton.

Ques. 14. Do you know why he made the said deed? If yea, state why and your means of knowledge.

Ans. It was so that I could sell the lands for the boys under George's instructions, as he was their natural guardian.

Ques. 15. Do you know whether he was indebted or in embar-

ressed circumstances at the time? If yea, how do you know it and who told you so?

Ans. I did not know of his being indebted or embarrassed at that time and do not know now that he was.

Ques. 16. Was the deed mailed to you to sign the acceptance of the trust, or was it delivered to you by some person for that purpose, and, if the latter, by whom was it so delivered?

Ans. I think I received it by mail.

Ques. 17. Why was the deed not left in your possession? Why was it sent or delivered back to George H., and what was said about the possession of the deed? Give the whole conversation, the time, the place, and parties present.

Ans. I have not stated that. It was sent or delivered back to him. The deed was retained in my possession.

Ques. 18. State if you were not given to understand at the time you signed said acceptance that you were not to exercise any authority or control over the lands.

Ans. No, sir.

Ques. 19. State if you were not given to understand at that time that no use was to be made of the deed.

Ans. There was no use to be made of it; only to put it on record.

Ques. 20. State if you were not given to understand that no use was to be made of the deed except upon a certain contingencies which might happen; and, if yea, what were those contingencies.

213 Ans. No, sir; nothing was said about any contingencies.

Ques. 21. State if you were given to understand at the time that you were to convey portions of the land from time to time as your brother should direct or as his circumstances might require.

Ans. Nothing was said as to his circumstances. I had an absolute right to sell and convey upon my own discretion. I was in no way governed by him, only as he directed, as the natural guardian of the children.

Ques. 22. State, if you know, why your brother George's wife did not sign the deed. What explanation was made to you of her failure so to do?

Ans. Not a single word was said about it that I know of; not a word.

Ques. 23. State if you ever conveyed these lands; if yea, when, to whom, and on what consideration.

Ans. I conveyed the lands to Alice Hilton, now Alice Ducharme, in 1863 for the nominal consideration of one thousand dollars, but no real consideration was ever received or expected to be received from her. Brother George and his wife Honora and myself all being present, it was understood by each one of us that it was conveyed to Alice in trust the same as I myself held it, she being at that time 18 years of age and unmarried.

Ques. 24. Have you ever seen the deed from George to yourself since you signed the acceptance of the trust; if yea, when, and how many times?

Ans. I held it in my possession up to the year 1863.

Ques. 25. At whose instance did you make the conveyance to Alice

B., and why did you make it, and why did you express in the deed a false consideration?

214 Ans. At the instance of my brother's wife Honora I made it because she suggested it; she wanted and insisted on ots being conveyed to Alice B. and I consented to it. I expressed the false consideration because I knew it was simply a matter of trust and had full confidence to believe that she would as faithfully and honestly carry out that original trust as I myself would, and it was a family matter and would injure and harm nobody outside of the family.

Ques. 26. If the deed from George to yourself was sent by mail at the time you signed the acceptance of the trust, did a letter of instructions or explanation or any letter from George or any one assuming to act for him accompany the deed? If yea, produce the letter and attache a true copy to your deposition, or, if it be lost or destroyed or mislaid so that you cannot find it, state its contents.

Ans. It was not sent by mail.

Ques. 27. State if within the last three or four months you have received any letter from your brother George concerning this suit or any suit involving these lands; and, if you say yea, produce that letter and attach a copy to your deposition, or, if you have mislaid the letter or destroyed it so that it cannot be found, state its contents.

Ans. I received an envelope addressed by my brother that had been evidently torn open, as it was ragged and torn badly; this contained a copy of the original notice or the original notice itself, but there was no letter in it; if there had been a letter in it, it had been extracted.

Ques. 28. Who took the letter out of the post office, to which you refer in your last answer?

Ans. One of my children.

Ques. 29. Which one of your children took it out and how

215 old was he or she?

Ans. I can't say which took the letter from the office.

Ques. 30. When did you receive the letter?

—. Last Saturday or the Saturday prior, I forgot which. There was a notice in it.

Ques. 31. You say there was a notice in it. Have you that notice with you?

Ans. No, sir; I have not.

Ques. 32. Was your brother George's name signed to that notice?

—. His name was embodied in the notice as one of the plaintiffs or defendants.

Ques. 33. Was his name signed to the notice?

Ans. No, sir.

Ques. 34. Was there any other writing on that notice except merely the notice itself?

Ans. No, sir.

Ques. 35. Was there any other paper in that envelope except the notice?

Ans. None.

Ques. 36. Where is that envelope or notice?

Ans. I don't know where it is, without it is around the house. I don't take any care of my papers unless I think they are of some value.

Ques. 37. State the contents of that notice.

Ans. I cannot state the notice or its contents. It was a common notice.

Ques. 38. State when last you received another letter from your brother George.

Ans. I received another one, it may be, about a week before I received the one just referred to.

Ques. 39. Have you that letter with you? If not, where is it?

216 Ans. No, sir; I have not. I cannot say where it is.

Ques. 40. State as near as you can the contents of that letter.

Ans. He told me in that letter that they talked of sending on and taking my deposition in this case, and he said in the letter that he was willing to admit all they could prove by me; said he was willing to admit the deeds and their execution and all them things, the date of the execution of the deed and its being a deed of trust simply, and the facts as to the presence of the parties; the facts just about as I have stated them in my affidavit.

Ques. 41. When last, prior to the reception to the last-named letter, did you receive any other letter from your brother George?

Ans. I have received letters all along through the winter.

Ques. 42. About how often?

Ans. I have received some four or five this winter.

Ques. 43. In how many, if any, of those letters did your brother, George H., write concerning this suit or the lands in controversy?

Ans. He stated in some of his letters he was about to have some trouble about the land which his son George had been swindled out of by a man, I think, by the name of Galey.

Ques. 44. State where any of the letters received from George H. are.

Ans. I cannot tell you.

Ques. 45. State whether you know of any of them having been destroyed.

Ans. I cannot say. I do not take care of any of them.

Ques. 46. State from whose hands you received the deed from George H. Hilton to yourself.

Ans. I received it by mail.

Ques. 47. When did you receive it?

217 Ans. I received it in the fall of 1861.

Ques. 48. What time in the fall?

Ans. It was after I moved in this county, and I moved in the county in August.

Ques. 49. When did you first learn that George H. had made the deed to you?

Ans. At the time of its reception.

Ques. 50. After the receipt of that deed what did you do with it?

Ans. I kept — in my possession.

Ques. 51. Up to what time?

—. Up to 1863.

Ques. 52. Who then did you give it to?

—. It then went into possession of my brother Edward.

Ques. 53. Where did he reside at that time?

—. He resided within half a mile of where I did.

Ques. 54. Who put it in his possession?

—. I can't remember whether I did or my brother. I can't say.

Ques. 55. Were you and George H. and Edward together at the time the deed was delivered to him?

Ans. I can't say that we were.

Ques. 56. How did that deed get out of your possession?

Ans. I can't say now how.

Ques. 57. Were not you and your brother George H. and Edward all here in Madison county in the year 1863?

—. Yes, sir.

Ques. 58. Was it during the time you were all here together that the deed went into the possession of Edward?

Ans. I can't say as regards that at all.

Ques. 59. Was that deed ever recorded?

Ans. I cannot say whether it was or not.

218 Ques. 60. Was it ever in your possession after it went into the possession of Edward?

—. No, sir; I don't think it was. I don't recollect of it being.

Ques. 61. How long before you made the deed to Alice B. was it that the deed went into Edward's possession?

—. I cannot say.

Ques. 62. About how long was it?

—. I cannot say.

Ques. 63. State all the facts within your knowledge in reference to that deed going into Edward's possession. What was said by George H. at or before that time in relation to the deed?

Ans. I received a letter some time after 1865 from my brother George stating in that letter that he had looked among his papers in his office and he could not find it, that deed, and asking me if I knew anything about it. I could not find among my papers and deed. My brother Edward had the deed in his possession. About that time, I think, the deed was put on record; that was the object in hunting it up.

Ques. 64. What consideration, if any, did you pay to George H. when he conveyed the land to you?

—. Not a single cent.

Ques. 65. Where was George H. at the time he made that conveyance and where was you?

—. He was in Cincinnati and I was here in Madison county.

Ques. 66. Was the acceptance of the trust written on the back of the deed at the time you received it from George H.?

—. I think it was.

Ques. 67. When did you sign that acceptance?

—. In the fall of 1861.

219 What did George H. write to you at the time he sent you that deed? State fully and specifically.

Ans. I can't say about that.

Ques. 68. State all that you can say about it.

I can't say anything about it; don't know that he ever wrote a letter at that time.

Ques. 69. State what explanation he gave of the fact of his making you the deed at or about the time it was made.

About that time my brother, thinking I was going to Nebraska, and taking into consideration the facts that I had located the lands and was acquainted with them, — that I could have an oversight over them and sell and convey them if I thought necessary.

Ques. 70. What did he at or about that time say or write to you about his pecuniary circumstances?

I don't know that he wrote or said anything to me about it.

Ques. 71. Did he at or about that time write to you anything about his pecuniary circumstances?

Not that I have any recollection of.

72. State what you know, if anything, either from your own knowledge or from what George H. may have said or written to you, concerning his political difficulties or embarressment at or about the time that deed was made to your——

Never heard ought about any political difficulties or embarressments, not that I recollect of.

73. Did not George H. go to Europe at or about the time that deed was made or soon after?

He went to Europe, but I think it was prior to that time. It may have been subsequent, but I think it was prior.

220 74. Was he or was he not in Europe after that deed was made and before he visited you in Madison county in 1863?

I cannot say after that deed was made, but before he was here in 1863.

75. When was the deed made by you to Alice B.?

In the fall of 1863.

76. What reason did your brother's wife give for your making that deed to Alice B.?

She gave no reason at all, only that she wanted it done so.

77. What did your brother George say about your conveying it to her?

I don't recollect of his saying anything.

78. What did his wife say about it?

She said she would rather it would be done that way.

79. Why did she say she would rather it would be done that way?

I don't think she gave any reason at all. I am satisfied she did not.

80. What did Alice B. say about the conveyance being made to her?

Never heard her say anything about it. Never saw her in my life.

81. She was not present at the time the conveyance was made, then?

No, sir.

82. Then she knew nothing about the conveyance being made to her?

No, sir; she knew nothing about it that I knew of.

83. State what was said by your brother's wife about the reason she did not sign the deed to you.

221 Not any; never heard her say a word about it.

84. State what you may know, if anything, either from your own personal knowledge or from what your brother George H. or his wife may have either said or written to you about the reason why your brother's wife did not sign that deed.

Never heard anything said about it at all. I think if there had been anything said I would have recollected it.

85. Did or did not your brother George visit you at your home, in Madison county, Iowa, during the summer or fall of 1861?

I think it was in 1860.

86. State whether he visited you before or after the presidential election in 1860?

I think it was before. He came up in the summer and went home in August of the same year.

87. Was he or was he not in Madison county visiting you after the rebellion broke out, in 1861?

No; he was out in 1863.

88. Will you produce all letters and papers now in your possession which passed between you and your brother George H. in relation to the land about which you have been testifying at any time between January, 1861, and the present time?

Yes, sir; I will produce all in my possession.

Not being able to complete the taking of this deposition by reason that the hour had expired in which the notice stated they were to be taken, I adjourned the further taking of the same until to-morrow at 8 o'clock a. m., at the same place, to be continued.

BYRAM LEONARD,
Notary Public.

222 Pursuant to the adjournment as above stated, on this 19th day of April, 1873, at 8 o'clock a. m., at the office of Jno. Leonard, in Winterset, Iowa, I continued the taking of said depositions as follows:

JOHN HILTON, in continuance of his deposition, further deposed as follows:

Ques. 89. Will you give to the notary the letters and papers referred to in your last answer, that copies of the same may be attached to this your deposition?

Ans. I won't do it without it is legal and right that it should be done.

Ques. 90. You are requested to produce those letters and papers,

that copies of the same may be attached to this your deposition and made a part thereof. Will you do so?

In those letters and papers there are things of a private nature, that I will not produce them. Not about this, but other family matters.

Ques. 91. Then you decline producing those letters and papers, do you?

Yes, sir.

Ques. 92. Since the adjournment last evening have you counseled any attorney in reference to the production of those letters or papers or in reference to the taking of your deposition?

Ans. I went to see Mr. Waunwright, but did not counsel with him, as the proceedings had gone so far that he did not wish his name to be attached to the record, is what he told me this morning.

Ques. 93. Mr. Wa-nwright is an attorney-at-law, is he?

Yes, sir.

94. What time in the spring of 1862 did George H. go to Europe?

223 I cannot say what time; only in 1863 I heard him say he had recently been in Europe.

95. Did you not know prior to 1863 that your brother had gone to Europe?

Yes; I knew he had gone to Europe before 1863.

96. Did you not know in the fall of 1861 that he contemplated going to Europe?

I did not, that I can recollect of.

97. Did he not write you or tell you prior to the time he went to Europe that he contemplated doing so?

I think he did, but I cannot tell when that was.

98. Did he not write you while in Europe?

No, sir; he never wrote me a letter while in Europe. I am satisfied he did not.

99. Is it legal, right, or proper for you to produce the letters and papers heretofore referred to by you?

I cannot say as regards to that.

100. Then if you do not know that it was illegal, improper, and not right for you to produce those letters and papers why do you not do so?

Because I never hardly got a letter from him without it has matters of a private nature in which I would not like to be published to the world in regard to our families. No person has any business with it.

JOHN HILTON.

Subscribed in my presence and sworn to before me by the above-named affiant, John Hilton, this 19th day of April, A. D. 1873.

[NOTARIAL SEAL.] BYROM LEONARD,
Notary Public.

On reading over his deposition to him the defendant corrected his answers as follows:

224 His answer to interrogatory No. 7: "I think he was out here in the year 1860."

His answer to interrogatory No. 73 to read as follows, to wit: "I think George went to Europe in the year 1862."

His answer to interrogatory No. 88 to read as follows, to wit: "If it is legal and proper."

STATE OF IOWA, } ss:
Madison County, }

I, Byrom Leonard, notary public in and for the county of Madison and State of Iowa, do hereby certify that John Hilton was by me sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed, as above set forth, *were* reduced to writing by myself in the presence of the witness, and was subscribed by the said witness in my presence, and was taken at the time and place in the annexed notice specified; that I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit, and said depositions were commenced at the time in said notice specified and continued by adjournment from day to day, as above stated.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at Winterset, in said county and State, on the 19th day of April, A. D. 1873.

[SEAL.] BYROM LEONARD,
Notary Public.

Fees:

Notary fees, protest	6 00
Sheriff & subpœna	50
Postage	25
Costs, total	6 75

Paid by Seth Robinson, counsel for Otoe Co. Nat. bank.

Deposition envelope endorsed as follows:

Filed April 23rd, 1873. R. O. Phillips, cl'k D. C. Opened
225 at request of E. E. Brown, att'y for pl'ff-, April 24, 1873. R. O. Phillips, cl'k, per R. N. Vedder, deputy.

GEORGE H. HILTON *et al.*
vs.
JOHN HILTON *et al.*

Deposition in said Action on Behalf of the Defendant The Otoe County Nat. Bank.

This deposition taken, sealed up, endorsed, addressed, and transmitted by me, Byrom Leonard, notary public, — clerk of the district court of the 2nd judicial district of Nebraska in and for Lancaster county, Lincoln, Neb.

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, A. D. Burr, clerk of the district court of the second judicial district in and for Lancaster county, Nebraska, do hereby certify that the within and foregoing is a true and correct copy of a deposition now on file in my office — wherein George L. Hilton and James F. Hilton and Joseph B. Hilton, infants and under the age of twenty-one years, by William W. Dunham, their next friend, are plaintiffs and John Hilton, Alice B. Ducharme and Alfred Ducharme, her husband; Augusta Hilton, George H. Hilton, The Otoe County National Bank of Nebraska City, and Samuel McClay, sheriff of Lancaster county, are defendants, with all the endorsements thereon and all endorsements on back of envelope containing same.

In witness whereof I have hereto attached my hand and seal of this court this 5th day of October, 1883.

A. D. BURR, *Clk D. C.*,
[SEAL.] By J. S. DALES, *Deputy.*

Clk's fees, $6.00.

Upon the back of said deposition appear endorsements in
226 words and figures following, to wit: Certified copy of deposition of Jas. Hilton in case of Geo. L. Hilton and other infants *vs.* Jas. Hilton, Otoe Co. Nat. B'k, *et al.* No. 117, H. Filed Dec. 13, 1886. Elmer D. Frank, clerk.

Deposition of Alice B. Ducharme.

"EXHIBIT I."

In the District Court of the 2nd Judicial District in and for Lancaster County, Nebraska.

JOHN T. LEVIS, Assignee, Plaintiff,
vs.
GEORGE H. HILTON, HONORA HILTON, His Wife; AUGUSTA HILTON, Alfred J. Ducharme, Alice B. Ducharme, John Hilton, George L. Hilton, James F. Hilton, and Joseph B. Hilton, Defendants.

Notice to Take Depositions.

Defendants above named are, each of them, *are* hereby notified that the said John T. Levis, plaintiff aforesaid, will proceed to take the depositions of witnesses in the above-entitled action at the office of Walker & Kent, corner of Larned street and Woodward avenue, in the city of Detroit and State of Michigan, on the 12th day of April, A. D. 1871, between the hours of ten a. m. and four p. m. of

said day, with authority to adjourn from day to day till all said depositions shall have been taken.

Dated this 28th day of March, A. D. 1871.

SETH ROBINSON,
Attorney for Plaintiff.

March 28th, 1871, received a copy of this notice.

JAS. E. PHILPOTT,
Att'y for Def'ts.

Depositions of a witness taken to be used in an action pending in the district court held in and for the county of Lancaster
227 and State of Nebraska, wherein John T. Levis is plaintiff and George H. Hilton, Honora Hilton, his wife; Augusta Hilton, Alfred J. Ducharme, Alice B. Ducharme, his wife; John Hilton, George L. Hilton, James E. Hilton, and Jos. B. Hilton are defendants.

In pursuance of the notice hereto attached and at the times and places therein stated the said John T. Levis appeared by J. W. Finnell, Esq., his attorney, and the said defendants George H. Hilton and Alice B. Ducharme appeared personally, and the other said defendants by said George H. Hilton, their attorney.

And thereupon the said John T. Levis produced the following witness, to wit:

ALICE B. DUCHARME, of lawful age, who, being first duly sworn, deposeth and saith as follows:

Question. State your name and residence and your relationship, if any, to Judge George H. Hilton.

Answer. My name is Alice B. Ducharme; my residence is Detroit, and I am the eldest child of the defendant George H. Hilton.

Question. State where Judge Hilton now resides and where he has resided since September, 1861.

Answer. He resided in Cincinnati from 1861 to 1865, in the fall, and since that time, till the spring of 1870, he resided in Campbell Co., Kentucky, and since that time his home has been partly in Cincinnati and part of the time in Lincoln, Nebraska.

Question. State whether you purchased any lands at any time from John Hilton, trustee; if so, when was the purchase made, what was the consideration paid, and the quantity and locality of the land.

Answer. I can't say that I purchased any lands from my uncle, John Hilton, but I know that he made over certain lands to
228 me; if you mean when he made over the property to me, it was on the 16th of September, A. D. 1863; I don't know what the consideration was—one dollar or one thousand; it was a nominal sum; I paid nothing; I don't know the number of acres; it was about two thousand acres; it was known as the Nebraska lands in the family; they were in Lancaster or other counties in Nebraska; I cannot give the description of the lands.

Question. What was your age at the date of this conveyance to you?

Answer. I was twenty years of age at the time.

Question. What disposition, if any, did you make of the land?

Answer. I made it over in A. D. 1865, in November, just before my marriage, to my sister Augusta; this was about the twentieth day of November on which I made the deed.

Question. What was the consideration from your sister to yourself of this conveyance to her?

Answer. I believe one dollar and natural love and affection.

Question. What was your sister Augusta's age at the date of this conveyance to her?

Answer. She was within five days of nineteen years.

Question. Is your recollection distinct that the deed was made in A. D. 1865?

Answer. I am positive.

Question. State whether your mother is now living; if not, the date of her death.

Answer. She died on the 18th of April, A. D. 1870.

Question. State the ages of all the children of Judge Hilton.

Answer. Augusta Hilton is twenty-four years, George L. Hilton is twenty-one, Honora Hilton is seventeen, James F. Hilton is fifteen, Joseph B. Hilton is eleven years of age.

229 Cross-examination:

Question. State in what right you understood that you held those lands that were deeded to you by John Hilton, trustee.

Answer. I understood that I held them in trust for my three brothers.

ALICE B. DUCHARME.

STATE OF MICHIGAN, } ss:
County of Wayne, }

I, Edward C. Walker, a notary public in and for said county of Wayne, do hereby certify that the above-named Alice B. Ducharme, the witness whose name is signed to the foregoing deposition, was by me first sworn according to law to testify the truth, the whole truth, and nothing but the truth in the case mentioned in the caption hereof and the annexed notice, and that the deposition by her subscribed was by me reduced to writing in her presence, and after the same had been read over to her by me was by me subscribed in my presence, and the same was taken on the twelfth day of April, A. D. eighteen hundred and seventy-one (1871), at the office of Walker and Kent, as specified in the annexed notice; that said plaintiff was represented by J. W. Finnell, Esq., and the defendants either in person or by George H. Hilton, their attorney; that I am not the attorney, relative, or agent of either party or in any way interested in the event of said suit.

In witness whereof I have hereunto set my hand and affixed my official seal this twelfth day of April, A. D. 1871.

E. C. WALKER,
Notary Public, Wayne County, Mich.

Endorsements on Deposition Envelope.

In the District Court of the 2nd Judicial District in and for the County of Lancaster, State of Nebraska.

230 JOHN T. LEVIS
vs.
GEORGE H. HILTON, HONORA HILTON, His Wife; AUGUSTA HILTON, Alfred J. Ducharme, Alice B. Ducharme, His Wife; John Hilton, George L. Hilton, James F. Hilton, and Joseph B. Hilton, Def'ts.

Deposition of Alice B. Ducharme, taken in said action in behalf of the plaintiff, before me and by me sealed up, endorsed, addressed and transmitted to the clerk of the district court of the second judicial district for the county of Lancaster and State of Nebraska.

E. C. WALKER,
Notary Public, Wayne Co., Michigan.

To the clerk of the district court of the 2nd judicial district in and for the county of Lancaster and State of Nebraska, Lincoln, Lancaster Co., Nebraska.

Opened at request of defendants' counsel.

R. A. BAIN, *Clk.*

Depositions taken, sealed up, and addressed and deposited in the P. O. at Detroit, Michigan, at 3 o'clock p. m., April 12, 1871.

E. C. WALKER,
Notary Public, Wayne Co., Michigan.

Filed April 15, 1871.

R. A. BAIN, *Clerk.*

STATE OF NEBRASKA, } ss:
Lancaster County, }

I, A. D. BURR, clerk of the district court of the second judicial district of Nebraska in and for said county, do hereby certify that the above is a true and correct copy of the deposition of Alice B. Ducharme, taken in and action in said court in which John T. Levis, &c., is plaintiff and George H. Hilton *et al.* are defendants,
231 as the same appears from the records and files of said court still remaining in my charge as clerk of said court, with all endorsements on said deposition.

Witness my hand and seal of said court this 27th Oct., 1883.

A. D. BURR, *Clerk D. C.*
[SEAL.] J. S. DALES, *Deputy.*

$3.00 paid by G. H. Hilton.

Upon the back of said deposition appear endorsements in words and figures following, to wit: No. 117, H. Certified copy of deposition of Alice B. Ducharme, taken in Detroit 12 Apr., 1871. Filed Dec. 13, 1886. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 16th day of December, 1886, stipulation submitting cases was filed in said case; which said stipulation is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

GEO. H. HILTON, Plaintiff,
vs.
JAMES F. HILTON *et al.*, Defendants, } No. 117, H.

and

JAMES F. HILTON *et al.*, Plaintiff-,
vs.
JAMES E. JONES *et al.*, Defendants. } No. 270, "L."

Stipulation.

It is hereby stipulated by and between the parties plaintiff and the parties defendant to the aforesaid action an- their attorneys that these two causes above named shall be submitted to the circuit judge, shall be tried together and heard as one case.

(2.) All proofs, exhibits, and pleadings in said causes may
232 be considered in evidence in each case as though filed as such therein, subject to all legal objection and exception thereto.

(3.) It is further stipulated that the parties may, within 25 days and not thereafter, file certified transcripts from the distr-ct and county court records and county records of Lancaster county, Nebraska, as additional proofs and exhibit-.

(4.) The said plaintiffs shall serve on each of said defendants' attorneys and file their printed briefs within 30 days from the date hereof; and the defendant- shall serve on the plaintiffs' attorneys their printed brief and file the same within 30 days from the time of receiving said plaintiffs' brief, and said plaintiff- may, if they desire, file within ten days of the receipt of the defendants' brief in reply.

Upon which stipulation said causes are hereby submitted to the circuit judge for final hearing and determination.

Dated this 25 day of November, 1886.

JOHN S. GREGORY,
Attorney and Solicitor for Pl'ff.
GEO. H. HILTON,
In Pro Se and of Counsel for Self.

HARWOOD, AMES & KELLY,
Solicitors for James E. Jones.
MASON & WHEDON,
Solicitors for Lowrey & Schmutte, Def'ts.
JAS. E. PHILPOTT,
Solicitor for Jacob Rocke.
T. M. MARQUETT,
Att'y for M. L. Hayward, for Otoe Co. Nat'l B'k.

Upon the back of said stipulation appear endorsements in words and figures following, to wit: No. 117, H, & 270, "I." Stipulation to submit cases. Filed Dec. 13, 1886. Elmer D. Frank, clerk.

233 Thereupon, afterwards, to wit, on the 4th day of January, 1887, replications were filed in said case; which said replications are in words and figures following, to wit:

Replication to Answer of Schmutte.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

GEORGE H. HILTON
vs.
JOHN HILTON, JAS. E. JONES, *et als.* } No. 117, H.

The replication of George H. Hilton, plaintiff, to the answer of Augustus F. J. Schmutte, defendant, to amended bill of plaintiff.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that *they* will aver, maintain, and prove his said bill and amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray- as in and by his said bill & amended bill of complaint he has already prayed.

GEO. H. HILTON,
Complainant and Solicitor for Self.

234 Upon the back of said replication appear endorsements in words and figures following, to wit: No. 117, doc. H. U. S. circuit court, district of Nebraska. In equity. Geo. H. Hilton *vs.* John Hilton, Jas. E. Jones, *et al.* Replication to ans. of Schmutte. Filed Jan. 4, 1887. Elmer D. Frank, clerk. G. H. Hilton, solicitor for plaintiff.

Replication to Answer of T. W. Lowrey to Amended Bill.

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

GEORGE H. HILTON
vs.
JOHN HILTON, JAS. E. JONES, *et al.* } No. 117, H.

The replication of George H. Hilton, plaintiff, to the answer of Thomas W. Lowrey, a defendant to the amended bill of plaintiff.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that *they* will aver, maintain, and prove his said bill and amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and
235 things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray- as in and by his said bill and amended bill of complaint he has already prayed.

GEO. H. HILTON,
Complainant, Solicitor for Self.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 117. Doc. H. U. S. circuit court of district of Nebraska. In equity. Geo. H. Hilton *vs.* Jas. Hilton, J. E. Jones, *et al.* Replication to answer of T. W. Lowrey to amended bill. Filed Jan. 4, 1887. Elmer D. Frank, clerk. G. H. Hilton, solicitor for plaintiff.

Thereupon, afterwards, to wit, on the 25th day of Jan., 1887, replication to amended answer of Otoe County Nat. bank was filed in said cause; which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

GEORGE H. HILTON
vs.
JAMES E. JONES *et al.* } 117, H.

The replication of George H. Hilton, plaintiff, to the amended answer of The Otoe County National Bank, a defendant, to amended bill.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that *they* will aver, maintain, and prove his said bill and amended bill of complaint to be true, certain, and sufficient in the law to be answered unto,
236 and that the said answer- of the said defendant are uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray- as in and by his said bill and amended bill of complaint — has already prayed.

GEO. H. HILTON,
In pro Se, Solicitor for Self.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 117. Doc. H. U. S. circuit court, district of Nebraska. In equity. Geo. H. Hilton *vs.* James E. Jones *et als.* Replication to amended answer of Otoe County Nat. b'k. 2d ans. Filed Jan. 25, 1887. E. D. Frank, clerk, by E. S. Dundy, Jr., dep. G. H. Hilton, *pro se*, solicitor for self.

Thereupon, afterwards, at the May term of said court, on the 23rd day of June, 1887, the following proceedings were had and done in said cause, as appears of record, Journal (M), folio 220, of said court, to wit:

GEORGE H. HILTON, Complainant,
vs.
JAMES E. JONES, JACOB ROCKE, THOMAS W. Lowrey, The Otoe County National Bank of Nebraska City, August F. J. Schmutte, *et al.*, Def'ts. } Decree. No. 117, H.

Now, at this day, this cause came on to be heard on amended bill, answers, replications, and the proofs taken and on file herein,
237 and the court, being fully advised in the premises, doth find that the equities of this cause are with the said defendants.

It is therefore considered, ordered, adjudged, and decreed that the complainant's said bill be, and hereby is, dismissed; that said defendants go hence without day, and that they recover against complainant their costs in this behalf expended, taxed, and the sum of $ —, and that they have the usual process of this court to enforce the collection thereof.

And thereupon said complainant prayed an appeal to the Supreme Court of the United States, which is allowed and bond on appeal fixed at $250.00.

(S'g'd) DAVID J. BREWER,
Circuit Judge.

Thereupon, afterwards, to wit, on the 23rd day of June, 1887, motion for rehearing was filed in said case; which said motion is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

GEORGE H. HILTON *vs.* JAMES E. JONES & Others.	Consolidated. In Equity. Motion.
JAS. F. HILTON & JOSEPH B. HILTON *vs.* JAMES E. JONES & Others.	

The complainant in the above cases, by Geo. H. Hilton, one of the above complainants, for himself and other complainants, now comes and moves the court for a rehearing of the above consolidated cases on the ground of newly-discovered evidence, which they could not have procured or obtained previous to or at the time of the submission of the above cases to the court — by reasonable diligence
238 could have discovered and produced at the trial on submission of the cases, material for the parties applying for this rehearing and affecting their substantial rights, to wit:

A certified transcript on the record in the case of the first petition of William C. Lincoln against James F. Hilton and Joseph B. Hilton, minors, and Geo. H. Hilton & others, in the district court of Lancaster county, Nebraska, in which application was made *by* said court by said Lincoln to sell not to exceed an undivided half of the lands in controversy in this case. Said transcript could not be obtained for the reason that no complete record has ever been made or exists in said court of said case, and at the time of the submission aforesaid the papers were found to be abstracted from the files of said court and could not be found by said clerk after diligent search, but which have since been found and placed on file—found among the papers of another attorney not in the cases.

2nd. That the judgment of the court is against both law and the evidence.

G. H. HILTON,
One of Comp'ts, for Self and for Jas. F. & Jos. B. Hilton.

Upon the back of said motion appear endorsements in words and figures following, to wit: No. 117, H, & 270, I. Circuit court U. S. Geo. H. Hilton *vs.* —— ——, J. F. & J. B. Hilton *vs.* Jas. E. Jones & others. Motion for rehearing, June 23rd, 1887. Motion overruled. D. J. Brewer, circuit judge. Filed June 23, 1887. Elmer D. Frank, clerk.

Thereupon, afterwards, at the May term of said court, on the said 23rd day of June, 1887, the following proceedings were had and done in said cause, as appears of record on folio 219, Journal "M," of said court, to wit:

239 GEORGE H. HILTON *vs.* JOHN HILTON *et al.* } Motion for Rehearing Overruled.

This cause having been heard on the motion of complainant for a rehearing herein, it is now, on this day, ordered, adjudged, and decreed by the court that said motion be, and the same is hereby, overruled.

Thereupon, afterwards, to wit, at the November term of said court, on the 31st day of December, 1888, the following proceedings were had and done in said cause, as appears of record on folio 199, Journal "N," of said court, to wit:

GEORGE H. HILTON *vs.* JAMES E. JONES, JOHN HILTON.	1886, Dec. 16. Stipulation by all Parties Filed for Both Cases, 117, H, & 270, I; to be Tried Together as One Case. 270, I.
JOHN BACHMAN *et al.*, JAMES F. HILTON, & JOSEPH B. HILTON *vs.* SAME DEF'TS AS ABOVE.	

This cause this day come on to be heard upon the suggestion of the above complainants in open court of the death of John Bachman, one of the defendants in said causes, since the commencement of the same in this court, and it appearing that there was no service made upon the said John Bachman, he having deceased on 20th Nov., 1885, before the issue of the writ for that purpose, and after the commencement of the suit it appearing to the court that the said Bachman died leaving a last will and testament, and that his widow, Katharine Bachman, is the executrix of the same—

It is by the court ordered that the said Katharina Bach-
240 man, executrix of the last will and testament of John Bachman, deceased, be made a party defendant to said actions, and that said suits proceed against said executrix as representative of the estate of said John Bachman, deceased.

(S'g'd) ELMER S. DUNDY.

Thereupon, afterwards, at the January term of said court, on the 19th day of January, 1889, the following proceedings were had and done in said cause, as appears of record on folio 279, Journal "N," of said court, to wit:

GEORGE H. HILTON
vs.
JOHN HILTON *et al.* } 117, H.

Now, on this day, comes the complainant herein and in open court prays an appeal to the Supreme Court of the United States, which is allowed by the court and the cost bond fixed at three hundred dollars.

Thereupon, afterwards, to wit, on the 24th day of January, 1889, a bond was filed in said cause; which said bond is in words and figures following, to wit:

Know all men by these presents that we, George H. Hilton (principal) and James F. Hilton (surety), are held and firmly bound unto John Hilton, James E. Jones, Thomas W. Lowrey, Katharina Bachman, as executrix of John Bachman, deceased, & others (defendants) in the full sum of three hundred — ($300), to be paid to the said John Hilton, James E. Jones, Thomas W. Lowrey, Katharina Bachman, executrix of John Bachman, deceased, and others (defendants), their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of January,
241 in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas, lately, at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between George H. Hilton, complainant, against John Hilton, James E. Jones, & others, respondents, judgment or decree was rendered against the said George H. Hilton for costs of suit, and the said George H. Hilton having obtained a 2nd appeal and to file a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said John Hilton, James E. Jones, Thomas W. Lowrey, Katharina Bachman, executrix of last will of John Bachman, dec'd, and the other defendants, citing and admonishing — to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October:

Now, the condition of the above obligation is such that if the said George H. Hilton shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

GEO. H. HILTON.
JAMES F. HILTON.

Approved by—

ELMER S. DUNDY, *Judge.*

Attached to said bond is affidavit in words and figures following, to wit:

In the Circuit Court U. S. for District of Nebraska.

GEORGE H. HILTON
vs.
JOHN HILTON, JAS. E. JONES, KATHARINA BACHMAN, Ex'trix of Jno. Bachman, Dec'd. } No. 117, H.

242 *Affidavit of Justification as Surety on Cost Bond in This Case for 2nd Appeal Granted.*

STATE OF NEBRASKA, *Lancaster County,* } *ss:*

James F. Hilton, being duly sworn by the undersigned, a notary public in and for said county, says that as surety on the cost bond in the above case on 2nd appeal granted he is worth eight hundred dollars over and above all his legal liabilities or judgments or decrees against him; that he is a single man, unmarried, and not the head of a family, and is worth one thousand dollars in real estate situated near the city of Lincoln, in said county and State of Nebraska, liable to execution, and is owner of an undivided one-third of N. E. ¼ of S. E. ¼ of sec. 11, town. 9, range 6, in said county, and same is free from any homestead or other exemptions of any kind and worth $200 per acre.

JAMES F. HILTON.

Sworn to and subscribed before me this 21st day of January, 1889.

[SEAL.]

F. S. PALMER,
Notary Public.

Upon the back of said bond appear endorsements in word- and figures following, to wit: No. 117. Docket H. United States circuit court, district of Nebraska. Bond. Filed Jan. 24, 1889. E. D. Frank, clerk.

243 UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Elmer D. Frank, clerk of the circuit court of the United States for the eighth circuit and district of Nebraska, do hereby certify that the foregoing folios from one to 243 contain true and faithful transcripts of bill of complaint, subpœna in chancery, separate answer of Smith B. Galey, order on absent defendants, replication to answer of Smith B. Galey, answer of James F. & Joseph B. Hilton, separate answer of Otoe *Co.* County Nat'l bank, Exhibit "A" referred to in answer, answer of Augusta Hilton, answer of Alice Ducharme, answer of John Hilton, replication to answer of Otoe County Nat'l bank, replication to answer of Augusta Hilton, replication to answer of Alice B. Ducharme, replication to answer of John Hilton, proof

of publication of order on absent defendants, order granting leave to amend bill of complaint, amended bill of complaint, answer of Jacob Rocke to amended bill, order extending time to answer, answer of Otoe County National bank, separate answer of Nora M. Lincoln, answer of James E. Jones, order granting leave to file replication, replication to answer of James E. Jones, separate answer of August F. J. Schmutte, separate answer of Thos. W. Lowry, proofs on part of defendants Lowry & Schmute, depositions on behalf of defendant Otoe County Nat'l Bank, depositions of Alice B. Ducharme, stipulation submitting case, replications to answers of Schmutte, Lowry, & Otoe County Nat'l bank, decree dismissing bill, motion for rehearing, order overruling motion for rehearing, order making Katharine Bachman party def't, order granting appeal, bond and affidavit on file in my office as said clerk, and the whole
244 thereof and the endorsements thereon in the case of George H. Hilton *vs.* James E. Jones *et al.*

Witness my hand and the seal of said circuit court, at Omaha, this 3rd day of June, A. D. 1889.

[Seal United States Circuit Court, District of Nebraska.]

ELMER D. FRANK, *Clerk.*

245 THE UNITED STATES OF AMERICA, } ss.
District of Nebraska, }

To James E. Jones, John Hilton, James F. Hilton, Joseph B. Hilton, Alice B. Ducharme, Augusta Hilton, Smith B. Galey, Thomas W. Lowrey, Jacob Rocke, The Otoe County National Bank of Nebraska City, August F. J. Schmutte, Katharina Bachmann, executrix of the estate of John Bachmann, deceased; William C. Lincoln, Nora M. Lincoln, and Thomas P. Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal & transcript filed in the clerk's office of the Supreme Court of the United States, wherein George H. Hilton is complainant and appellant & James E. Jones, John Hilton, James F. Hilton, Joseph B. Hilton, Thomas W. Lowrey, Jacob Rocke, The Otoe County National Bank of Nebraska City, August F. J. Schmutte, Katharina Bachmann, executrix of the estate of John Bachmann, deceased; William C. Lincoln, Nora M. Lincoln, *et als.* are defendants and appellees, *and you are defendants*, to show cause, if any there be, why the decree rendered against the said complainant appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Omaha, this 3d day of July, 1889.

ELMER S. DUNDY, *Judge.*

246 THE STATE OF NEBRASKA, } ss:
Lancaster County, }

On 25th July, 1889, personally appeared before me, a notary public in & for said county, George H. Hilton, who, being duly sworn by me, says that on the 5 July, 1889, at her residence, in Clay county, Nebraska, the said Hilton delivered a true copy of the within citation to Katharina Bachmann, executrix of John Bachmann, deceased; and on the 8th day of July, 1889, in Lincoln, Nebraska, he delivered a true copy of this citation to Thomas W. Lowrey; and on the 12th day of July, 1889, he delivered a true copy of this citation to W. E. Hill, president of the Otoe County National Bank of Nebraska City, at Nebraska City, Neb.; and on the 16th day of July, 1889, he delivered a true copy of this citation to Jacob Rocke, at Lincoln, Nebraska.

GEO. H. HILTON.

Sworn to & subscribed *to* before me this 25th day of July, 1889, at Roca, Neb.

F. S. PALMER,
Notary Public.

[Notarial Seal F. S. Palmer, Lancaster County, Nebraska.]

THE STATE OF OHIO, } ss:
Lake County, }

George H. Hilton, the complainant in this case, being duly sworn by undersigned, a notary public in & for said county, on oath says that on the 27th day of July, 1889, at Chicago, Ill., he served a true copy of this citation personally on Thomas P. Smith, and on the 30th day of July, 1889, he served personally on William C. Lincoln and Nora M. Lincoln each a true copy of this citation.

GEO. H. HILTON.

Sworn to & subscribed before me this 5 day of August, 1889, at Painesville, Ohio.

HARRY B. BOSWORTH,
Notary Public, Lake County, Ohio.

[Notarial Seal, Lake Co., Ohio.]

[Endorsed:] No. 1165. H. 117. United States circuit court, district of Nebraska. George H. Hilton *vs.* James E. Jones *et als.* Citation. Filed ——, 188–. ——, clerk.

We acknowledge service of a copy of the within paper this 5th day July, 1889.

HARWOOD, AMES & KELLY,
Sol's for J. E. Jones.

We acknowledge service each of a copy of this writ this 5th day of July, 1889.

JOSEPH B. HILTON.
JAMES F. HILTON.

We acknowledge service each of a copy of this writ 15 July, 1889.

J'N HILTON.
ALICE B. DUCHARME.
AUGUSTA HILTON.

Fees for service:

Services of writ (7)	14 00
Travel from Lincoln to Sutton & return	6 50
Travel from Lincoln to Nebraska City & return	3 50
Travel from Lincoln to Chicago	14 40
Subsistance	3 00
	41 40

246½ [Endorsed:] Supreme Court U. S. 1889, October term. No. 1165. Geo. H. Hilton, app't, *vs.* Jas. E. Jones *et al.* Citation & proof of service.

[Stamped:] Office Supreme Court U. S. Filed Aug. 7, 1889. James H. McKenney, clerk.

Endorsed on cover: Case No. 13,572. Nebraska C. C. U. S. No. 47. George H. Hilton, appellant, *vs.* James E. Jones, John Hilton, Thomas W. Lowrey, Katharine Bachman, as executrix of John Bachman, deceased, *et al.* Filed June 10, 1889.

Office Supreme Court, U. S.
FILED
OCT 16 1895
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895

George H. Hilton, *Appellant*,
vs.
James E. Jones, John Hilton, Thomas Lowrey et al., *Appellees*.

Appeal from Circuit Court of Nebraska.

STIPULATION AND ADDITIONAL RECORD.

S. S. GREGORY,
W. M. BOOTH,
JAS. S. HARLAN,
Solicitors for heirs of George H. Hilton.

THE GUNTHORP-WARREN PRINTING COMPANY, 53 DEARBORN ST., CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895.

George H. Hilton, *Appellant,* vs. **James E. Jones, John Hilton, Thomas Lowrey et al.,** *Appellees.*	)	Appeal from Circuit Court of Nebraska.

STATEMENT.

Mr. C. C. Burr, of Lincoln, Nebraska, purchased the lands involved in this litigation shortly after it was begun, and since that time he has been the real party in interest on the side of the defendants. Upon the death of James E. Jones, nominally the principal defendant, which death has been suggested on the record, it seemed best to make him a party to the suit, Jones and his heirs, who live abroad, having now no real interest in the result. This has been done by a stipulation, which is hereto attached and which it is desired shall be considered as part of the record.

The appellant is also deceased, but his heirs have already been substituted as parties.

Respectfully submitted.

S. S. Gregory,
W. M. Booth,
Jas. S. Harlan,
Solicitors for heirs of George H. Hilton.

IN THE SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, A. D. 1895.

George H. Hilton,
Appellant.
vs.
James E. Jones, John Hilton, Thomas Lowrey *et al.*,
Appellees.

Appeal from the Circuit Court of Nebraska.

STIPULATION.

Whereas, it now appears that said James E. Jones, during his life-time parted with all his right, title and interest in and to all the premises involved in the above entitled cause to Mr. C. C. Burr, a citizen and resident of the City of Lincoln in the State of Nebraska, as will appear by a certified copy of the deed of conveyance which are hereto attached and made a part hereof.

And whereas, the heirs of said Jones have no interest whatever in the lands in controversy.

Now, therefore, the parties stipulate and agree that said C. C. Burr may be a party upon the record herein, and that he shall be as fully bound by said record and by any judgment or decree that has been or may be entered thereon as if he had been an original party defendant to the bill of complaint therein. And his appearance as such party is hereby entered by his solicitor, John H. Ames, who also hereby enters the appearance of Jacob Bigler, the administrator of said Jones, appointed by the County Court of Lancaster County, Nebraska.

October 1, 1895.

S. S. GREGORY,
W. M. BOOTH,
JAS. S. HARLAN,
Solicitors for the heirs of George H. Hilton, deceased.

JOHN H. AMES.
Solicitor for C. C. Burr, and the administrator of James E. Jones, Jacob Bigler.

Deed Record 61, page 523.

Warranty Deed.
Jame E. Jones
to
Carlos C. Burr. Filed for record June 1. 1891, at 9 A. M. Jno. D. Knight, register of deeds. J. H. Farrell, Dep.
Fee $1.50.

Know All Men by These Presents: That James E. Jones, a widower, of the County of Lancaster and State of Nebraska, for and in consideration of the sum of $50,000 in hand paid, do hereby grant, bargain, sell, convey and confirm unto Carlos C. Burr, of the County of Lancaster and State of Nebraska, the following described real estate, situated in Lancaster County and State of Nebraska, to wit:

The same tract of land deeded by Dolley to Jones, and recorded in book 22, page 617 deed records, said Lancaster County, and described by metes and bounds as follows:

Commencing at the north-west corner of the north-west quarter of the south-west quarter of section numbered thirty-five (35), in township numbered ten (10) north, of range numbered six (6) east of the 6th P. M. in said county; thence east on the north line of said quarter section twenty one hundred and sixty-nine and four-tenths ($2,169\frac{4}{10}$) feet to a limestone, in the west line of the right of way of Nebraska Railway; thence south along the west line of the right of way of said railway fifteen hundred and thirty-eight and five-tenths ($1,538\frac{5}{10}$) feet, following the curvature to a sandstone planted at the intersection of said right of way line with the east line of said south-west quarter of said section numbered thirty-five (35); thence south along the east line of said quarter section one hundred and ninety-eight and six-tenths ($198\frac{6}{10}$) feet to a limestone; thence west twenty-six hundred and forty-four and five-tenths ($2,644\frac{5}{10}$) feet to a limestone planted on the west line of said quarter section; thence north along the west

line of said quarter section sixteen hundred and sixty-seven and five-tenths ($1,667\frac{5}{10}$) feet to the place of beginning. Also the south half of the north west quarter of section numbered thirty-five (35), in township numbered ten (10) north, of range numbered six (6) east of the 6th P. M., in said county and state, save and except that part of said south half of north-west quarter described as follows: Commencing at a point on the east side of the right of way of the Nebraska Railway, where the same intersects with the north line of said south half of the north west quarter of said section thirty-five (35); thence running east on said line eight hundred and twenty-five and five-tenths ($825\frac{5}{10}$) feet to the north-east corner of said south half of north-west quarter of said section No. thirty-five (35); thence south on the east line of said south half of the north-west quarter of said section No. thirty-five (35) five hundred and ninety-five feet (595 ft.); thence west on a line parallel with said north line of said south half of the north-west quarter of said section No. thirty-five, six hundred and twenty-nine (629) feet to the east line of said right of way of said Nebraska Railway; thence north-westerly, following the the *curvatues* of said right of way to the place of beginning, containing ten (10) acres. The premises hereby conveyed containing one hundred and sixty-three and thirty-eight hundredths ($163\frac{38}{100}$) acres. Subject to rights of way to railroads. And the said James E. Jones does hereby covenant with the said Carlos C. Burr and his heirs and assigns, that he is lawfully seized of said premises; that they are free from incumbrance; that he has good, right and lawful authority to sell the same; and said James E. Jones does hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

Signed this twenty-seventh day of May, A. D. 1891.

JAMES E. JONES.

In presence of

ROSCOE POUND.

THE STATE OF NEBRASKA, } ss.
LANCASTER COUNTY. }

On this twenty-ninth day of May, A. D. 1891, before the undersigned, a notary public, duly commissioned and qualified for and residing in said county, personally came James E. Jones, a widower, to me known to be the identical person described in and who executed the foregoing conveyance as grantor, and acknowledged the said instrument to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

[NOTARIAL SEAL]

ROSCOE POUND,
Notary Public.

STATE OF NEBRASKA, } ss.
LANCASTER COUNTY. }

I, John Harrop, register of deeds of said county, hereby certifiy that the above and foregoing is a true and correct copy of a deed as appears of record in this office in deed record 61, at page 523.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at the City of Lincoln, this 5th day of October, A. D. 1895.

[NOTARIAL SEAL]

JOHN HARROP,
Register of Deeds.

. . . . . .
Deputy.